(2)

Supreme Court, U.S.
FILED

109

10-295

JUN 15 2010

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES B. VEASAW - PETITIONER

Vs.

UNITED STATES,
Christopher Cox Chairman,
Unites States Securities and Exchanged Commission
- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI FROM
UNITED STATES FIFTH CIRCUIT COURT

PETITION FOR WRIT OF CERTIORARI

APPENDIX A VOL. 1 of 2

JAMES B. VEASAW
1511 Walnut Lane
Humble , TX, 77339

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APPENDIX 1A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW,	§	
Plaintiff	§	
v.	§	CIVIL CASE
MARY L. SCHAPIRO,	§	No .H-08-2936
CHAIRMAN	§	
UNITED STATES SECURITIES	§	
AND EXCHANGE COMMISSION	§	
Defendant.	§	

MEMORANDUM AND ORDER

Pending before the Court is a Motion to Dismiss [Doc. # 10], filed by Defendant the Securities and Exchange Commission ("SEC"). Plaintiff James B. Veasaw has responded [Doc. # 12]. Upon review of the parties' submissions, all pertinent matters of record, and applicable legal authorities, the Court concludes that the SEC's Motion should be granted.

I. FACTUAL BACKGROUND

The allegations in Plaintiff's Complaint largely mirror those previously asserted by Plaintiff in a series of cases in 2003 and 2004. A brief explanation of the prior cases is therefore necessary for a proper understanding of the present dispute. On September 22, 2003, Plaintiff filed an action against seven governmental entities, including the SEC, broadly alleging "intentional government fraud, misfeasance, malfeasance, nonfeasance, intentional government interference and cover up by state and federal employees." 1 On January 8, 2004, this case was referred to Magistrate

Judge Nancy K. Johnson. The court severed the allegations into six
lawsuits 2 and instructed Plaintiff to file an amended complaint in each case stating his allegations against the respective defendants. 3
On December 17, 2004, Judge Johnson issued a Memorandum and Recommendation 4 recommending that Plaintiff's claims against the SEC in case 4:03-cv-3878 be dismissed for failure to exhaust administrative remedies as required by 29 C.F.R. § 1614.105(a) 5 and alternatively for failure to bring a civil action within ninety days of receipt of a notice of a final agency action as required by 42 U.S.C. § 2000e-16(c).6 On February 3, 2005, District Judge John D. Rainey adopted Judge Johnson's Memorandum and Recommendation and dismissed Plaintiff's claims against the SEC.7 On November 8, 2005, the Fifth Circuit affirmed the district court's order dismissing case 4:03-cv-3878.8 On October 2, 2006, the United States Supreme Court denied Plaintiff's petition for a writ of certiorari.9

On December 12, 2004, Judge Johnson also recommended that the five other lawsuits (none of which were against the SEC) be dismissed. On February 3, 2005, Judge Rainey adopted the Magistrate Judge's recommendations and dismissed all of Plaintiff's claims in these respective lawsuits.

On October 2, 2008, Plaintiff filed a complaint in the present action asserting a claim under the Privacy Act of 1974, 5 U.S.C.§ 552a *et. seq.* (the "Privacy Act").10 The SEC moves to dismiss Plaintiff's claim under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Alternatively, the SEC moves to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

II. LEGAL STANDARDS

A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v.pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (citations omitted). In considering a challenge to subject matter jurisdiction, the district court is "free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case." *Id.* When the court's subject matter jurisdiction is challenged, the party asserting jurisdiction bears the burden of establishing it. *See Gaar v. Quirk*, 86 F.3d 451, 453 (5th Cir.1996).

A motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Home Builders Ass'n*, 143 F.3d at 1010. Any uncontroverted facts in the complaint must be accepted as true and the court is to construe the complaint broadly and liberally. *See Gaubert v. United States*, 885 F.2d 1284, 1285 (5th Cir.1989). A motion to dismiss under Rule 12(b)(6) for failure to state a claim is viewed with disfavor and is rarely granted. *See Hall v. Hodgkins*, 2008 WL 5352000, at *2 (5th Cir. Dec. 23, 2008); *Priester v. Lowndes County*, 354 F.3d 414, 418 (5th Cir. 2004) (citing *Lowrey v. Tex. A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997)). The

complaint must be liberally construed in favor of the plaintiff and all well-pleaded
facts taken as true. *See Erickson v. Pardus*, 551 U.S. 89, __, 127 S. Ct. 2197, 2200 (2007) ("[A] judge must accept as true all of the factual allegations contained in the complaint." (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007) (internal citations omitted))). "Factual allegations must be enough to raise a right to
relief above the speculative level, on the assumption that all the allegations in the
complaint are true (even if doubtful in fact)." *Twombly*, 550 U.S. at 555 (internal citations omitted).

III. ANALYSIS

Plaintiff's Complaint is far from a model of clarity. Broadly construed, Plaintiff raises a claim under the Privacy Act. Plaintiff alleges that the SEC disclosed private information about him to a third party, R.A. "Nick" Lee ("Lee") of JDG Associates, before Lee (or presumably JDG Associates) was an authorized contractor with the SEC.11 Plaintiff contends that Lee did not become an authorized contractor until September 15, 2003.12 Plaintiff alleges that Lee interfered with Plaintiff filing his 2003 lawsuit (4:03-cv-3878) by making "numerous contacts with the Plaintiff just
prior to the Deadline on September 15, 2003[, that] cause[d] the Plaintiff harm by making the Plaintiff miss the deadline by at least 2 days."13 Plaintiff specifically. pleads that Lee first made "unauthorized contact with [him] on September 9, 2003."14 The SEC argues that Plaintiff's claims are barred by the Privacy Act's statute of limitations. The SEC also argues that Plaintiff is attempting to resurrect claims previously dismissed by the court and that the claims are barred by claim preclusion.

A. Statute of Limitations

A party may sue a federal agency under the Privacy Act for certain acts of wrongful dissemination of information. *See* 5 U.S.C. § 552a(g). Section 522a(g) provides that "[a]n action to enforce any liability created under this section may be brought in the district court . . . within two years from the date on which the cause of action arises . . . ." 5 U.S.C. § 522a(g)(5). A cause of action arises when the plaintiff knew or should have known of the alleged violation. *See Smith v. U.S.*, 142 F. App'x 209, 209 (5th Cir. 2005) (unpublished) ("We agree with the majority of other circuits that, under section 552a(g)(5) of the Privacy Act (5 U.S.C. § 552a *et seq.*), a cause of action accrues when the plaintiff knew or should have known of the alleged violation."); *Blaylock v. Snow*, 2006 WL 3751308, at *7 (N.D. Tex. 2006); *see also Davis v. U.S. Dep't of Justice*, 204 F.3d 723, 726 (7th Cir. 2000).

Plaintiff argues that so long as he "had an OPPORTUNITY TO APPEAL the damages were not ACCRUED,"15 and, therefore, his cause of action under the Privacy Act did not accrue until the United States Supreme Court denied his petition for a writ of certiorari on October 2, 2006. Plaintiff's argument is unsupported and relevant Fifth Circuit authority is clear: a cause of action arises when the plaintiff knew or should have known of the alleged violation. Accordingly, the issue before the Court is when Plaintiff knew or should have known of the alleged violation of the Privacy Act that serves as the basis of his claim. Plaintiff does not dispute that on September 9, 2003, he "received a Certified letter (BEFORE THE FACT) from the R.A. "NICK" Lee of JDG ASSOCIATES informing the plaintiff of the FACTIOUS HIRING of JDG ASSOCIATES by the SEC."16 This September 9, 2003, letter informed Plaintiff of JDG Associates' knowledge of Plaintiff and forms the basis of Plaintiff's Privacy Act claim. As of the date he

received this letter,17 Plaintiff knew or should have known of the alleged Privacy Act violation. Plaintiff's Privacy Act claim accordingly accrued more than two years prior to filing the present lawsuit on October 2, 2008, and is barred by the statute of limitations. The SEC's Motion to Dismiss is granted.

B. Claim Preclusion

A significant portion of Plaintiff's Complaint is dedicated to his continued insistence that his prior claims were improperly separated and dismissed. The SEC argues that Plaintiff's claims against it are barred by the doctrine of claim preclusion and should be dismissed under Rule 12(b)(1) because the Court lacks the statutory and constitutional power to adjudicate the case. Plaintiff responds by arguing that the prior decisions were not rendered by a competent court and therefore can have no preclusive effect.

Under the doctrine of claim preclusion (res judicata), "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *U.S. v. Davenport*, 484 F.3d 321, 326 (5th Cir. 2007) (quoting *Montana v United States*, 440 U.S. 147, 153 (1979)). "The bar prevents relitigation of all "issues that were or could have been raised in [the previous] action."" *Id.* (quoting *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981)). For claim preclusion to apply, "the following four-part test must be satisfied: (1) the parties must be either identical or in privity; (2) the judgment in the prior action must have been rendered by a court of competent jurisdiction; (3) the prior action must have been concluded to a final judgment on the merits; and (4) the same claim or cause of action must have been involved in both actions.' *Id.* (quotations and citations omitted).

Plaintiff has offered no meaningful argument that the prior decision was not

rendered by a court of competent jurisdiction and the Court is unable independently to conceive of any such valid argument. The prior dismissal of Plaintiff's claims against the SEC was rendered by a court of competent jurisdiction and was oncluded by a final judgment on the merits. Moreover, the prior action involved the same parties presently before the Court and the same claims were involved in both actions. Therefore, to the extent Plaintiff seeks to reassert any of the claims that were raised or could have been raised against the SEC in the prior litigation, the claims are barred by claim preclusion. The SEC's Motion to Dismiss is granted.

IV. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the SEC's Motion to Dismiss [Doc. # 10] is GRANTED, and this case is DISMISSED.

A separate final judgment will be entered.

SIGNED at Houston, Texas,
this 12th day of May, 2009.

1 *See* Plaintiff's Original Complaint 4:03-cv-3878, Doc. # 1], at 1.

2 Cases 4:03-cv-3878, 4:04-cv-0066, 4:04-cv-0067, 4:04-cv-0068, 4:04-cv-0069, and 4:04-cv-0070.

3 *See* Order [4:03-cv-3878, Doc. # 45]. Thereafter, only case no. 4:03-cv-2878 contained claims against the SEC.

4 *See* Memorandum and Recommendation [4:03-cv-3878, Doc. # 52].

5 Specifically, Plaintiff failed to exhaust administrative remedies before filing a formal complaint with the Equal Employment Opportunity Commission ('EEOC') by failing to initiate contact with an EEOC counselor within forty-five days of the date

of the matter alleged to be discriminatory as required by 29 C.F.R. § 1614.105. *See Teemac v. Henderson*, 298 F.3d 452, 454 (5th Cir. 2002).

6 Plaintiff filed the civil action more than ninety days after receipt of a "right to sue" letter from the EEOC. Ninety days from receipt of this letter was September 15, 2003, and Plaintiff did not file the civil action against the SEC until September 22, 2003.

7 *See* Order [4:03-cv-3878, Doc. # 53].

8 *James B. Veasaw v. Chair Cari M. Dominguez, et al.*, No. 05-20312 (5th Cir. Nov. 8, 2005) (per curiam).

9 *Veasaw, James B. v. Dominguez, Cari M., et al.*, No. 05-1467 (Oct. 2, 2006).

10 *See* Plaintiff's Complaint [Doc. # 1].

11 *See Id.*, ¶ 10.

12 *Id.*

13 *Id.*, ¶ 19.

14 *Id.*, ¶ 12

15 Plaintiff's Response [Doc. # 12], at 4. Plaintiff's pleadings make extensive and creative use of capitalization. To avoid mischaracterizing his claims, the Court has adopted Plaintiff's phrasing and capitalization.

16 Plaintiff's Complaint [Doc. # 1], ¶ 14.

17 Plaintiff attached this letter to his Original Complaint in case 4:03-cv-3878, further demonstrating that at the latest he knew of the alleged violation by September 22, 2003. *See* Plaintiff's Original Complaint [4:03-cv-3878, Doc. # 1], at 60 of 119.

APPENDIX 2A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW,
Plaintiff, §
v. § CIVIL CASE NO. H-08-2936
§
MARY L. SCHAPIRO, CHAIRMAN §
UNITED STATES SECURITIES §
AND EXCHANGE COMMISSION §
Defendant. §

FINAL JUDGMENT

In accordance with the Memorandum and Order issued this day, it is hereby

ORDERED that Defendant's Motion to Dismiss [Doc. # 10] is GRANTED.

Plaintiff's claims are DISMISSED WITH PREJUDICE.

This is a final, appealable order.

The Clerk will provide copies of this order to the parties.

SIGNED at Houston, Texas, this 12th day of May, 2009.

APPENDIX 3A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-20593
Summary Calendar
United States Court of Appeals

Fifth Circuit

FILED
January 20, 2010
Charles R. Fulbruge III
Clerk

JAMES B. VEASAW,
Plaintiff-Appellant

v.

UNITED STATES OF AMERICA and CHRISTOPHER COX, Chairman,
UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Defendants - Appellees.

Appeal from the United States District Court
For the Southern District of Texas
USDC No. 4:08-CV-2936

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Appellant fails to address in his brief to this court any errors in the district court's opinion and order dismissing appellant's suit. Accordingly, we grant the motion of appellees for summary affirmance. The judgment of the district court is therefore AFFIRMED.

Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not *
be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

APPENDIX 4A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-20593

United State of Appeals
F I L E D
Mar 18, 2010
Charles R. Fulbruge III
Clerk

JAMES B. VEASAW,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA and CHRISTOPHER COX, Chairman,
UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Defendants - Appellees.

Appeal from the United States District Court
For the Southern District of Texas, Houston

ON PETITION FOR REHEARING EN BANC
(Opinion _____, 5 Cir., ____, __ F.3d _____)

Before DAVIS, SMITH and DENNIS Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R.App. P. and 5th Cir. R. 35) the Petition for Rehearing En. Banc is DENIED.

( ) Treating the Petiotion for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disquilified not having voted in favor (Fed. R.App. P. and 5th Cir. R. 35), the petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT

s/ W. Eugene Davis
United States Circuit Judge

REHG-6A

USDC No. 4:08-CV-2936
Before DAVIS, SMITH, and DENNIS, Circuit Judges.
PER CURIAM:*
Appellant fails to address in his brief to this court any errors in the district
court's opinion and order dismissing appellant's suit. Accordingly, we grant the
motion of appellees for summary affirmance.
The judgment of the district court is therefore AFFIRMED.
United States Court of Appeals
Fifth Circuit
F I L E D January 20, 2010
Charles R. Fulbruge III, Clerk
Case: 09-20593 Document: 00511008902 Page: 1 Date Filed: 01/20/2010

APPENDIX 5A

==========

THE FOLLOWING SIX CASES WERE ALL SEPARATED
FROM CIVIL ACTION NO. H-03-3878

AS A FRAUD OF ON COURT
SCHEME IMPLEMENTED BY THE COURTS
INTO SIX SUPPOSEDLY
SEPARATE CASES
CIVIL ACTION NO. H-03-3878
CIVIL ACTION NO. H-04-66
CIVIL ACTION NO. H-04-67
CIVIL ACTION NO. H-04-68
CIVIL ACTION NO. H-04-69
CIVIL ACTION NO. H-04-70
AND
THEN THESE SAME SUPPOSEDLY
INDEPENDENT AND SEPARATE
CASES WERE DISMISSED
ON THE SAME DAY
AND
SOME WERE SENT TO THE PLAINTIFF
IN THE SAME ENVELOPE
AND
WERE NOT DISMISSED
BUT AS THEY WERE WRITTEN
BUT WERE DISMISSED SO TO FORCE THE PLAINTIFF
TO RESPOND TO ALL SIX CASES WITHIN TH THE SAME
TIME LIMIT AS IF THEY WERE STILL ONE CASE

APPENDIX 6A

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

==========

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
JAN 09 2004
Michael N. Milby, Clerk of Court

JAMES B. VEASAW	§	CIVIL ACTION
Plaintiff,	§	H-03-3878
	§	H-04-66
v.	§	H-04-67
CARI DOMINGUEEZ,	§	H-04-68
et. al.	§	H-04-69
Defendant.	§	H-04-70

ORDER

The court has reviewed the allegations contained tin the Plaintiff's complaint (Docket Entry No.1) , and , after discussing the allegations with Plaintiff at the Rule 16 hearing, finds that judicial economy requires that this action

be severed into six separate lawsuits.

As it stands now, Plaintiff's complaint is incomprehensible. It is therefore

ORDERED that plaintiff file an amended complaint under the present case number, H-03-3878, captioned "James B. Veasaw v. U.S. Securities & Exchange Commission and Equal Employment Opportunity Commission" which outlined his title VII complaint against the U.S. Securities and Exchange

Commission and any grievance against the equal Employment Opportunity Commission which relates to that Title VII complaint. Plaintiff will specifically state all facts upon which this claim (s) is predicated, along with the federal law which makes this claim (s) actionable. It is further

====== QUOTING COURT ORDER ENDED ==========

EMPHASIS HAS BEEN ADDED
IN 16 Pt , SPACES, BOLD
AND UNDERLINED
TO HIGHLIGHT THE KEY WORDS

SEVERED and SEPARATE

THIS IS THE CONTENTS of
THE FIRST PAGE
OF THE ORDER
THE REMAINING OF THIS DOCUMENT
IS NOT PRESENT and FOR THE PLAINTIFF CASE
THE PLAINTIFF FEELS IS
NOT NEEDED FOR THE PLAINTIFF CURRENT POINT

THAT THE ALL 6 CASES
That were to be
SEVERED and SEPARATE

WERE AND WERE SUPPOSE TO BE

INDEPENDENT OF THE OTHER 5 CASES
And
WERE NOT INDEPENDENT of each other.

APPENDIX 7A

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United States Courts, Southern District of Texas
ENTERED Dec. 17, 2004, Michael N. Milby, Clerk of Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

==========

JAMES B. VEASAW, et al., Plaintiff,
v. § CIVIL ACTION NO. H-03-3878
U. S. SECURITIES AND EXCHANGE,
COMMISSION and EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Defendants

MEMORANDUM AND RECOMMENDATION

Pending before the court[1] is a Motion to Dismiss submitted by Defendants Securities and Exchange Commission and Equal Employment Opportunity Commission (Docket Entry No. 50). The court has reviewed the motion, Plaintiff's response thereto, and the relevant law. For the reasons discussed below, it is RECOMMENDED that the Defendants' motion be GRANTED.

I. Case Background

On September 22, 2003, Plaintiff filed this action against seven governmental entities and Advocacy Incorporated, making widespread allegations of "intentional government fraud, misfeasance, malfeasance,

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[1]This case was referred to the undersigned magistrate judge pursuant to 28 U. S. C. § 636 (b) (1) (A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Fed. R. Civ. P. 72.

nonfeasance, intentional government interference and coverup by state and federal employees."[2] At the

Rule 16 hearing, the court severed these allegations into six lawsuits and instructed Plaintiff to file an amended complaint in each case, separately stating his allegations against the respective defendants. On February 12, 2004, Plaintiff filed his Amended Complaint in this action.[3]

In the present complaint, Plaintiff sues the Securities and Exchange Commission ("SEC"); pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U. S. C. § 2000e, et seq., the Age Discrimination in Employment Act ("ADEA"), 29 U. S. C. § 621, et seq., and the Rehabilitation Act of 1973 (""Rehabilitation Act"", 29 U. S. C. § 791, et seq., for its failure to hire him. Plaintiff also complains that the SEC did not have an effective affirmation action plan on file with the Equal Employment Opportunity Commission ("EEOC") and that the SEC denied him his constitutional rights to due process and equal protection of the laws when it failed to hire him in 2000.

Plaintiff sues the EEOC for violations of his constitutional rights based on its failure to protect Plaintiff's constitutional rights in his dealings with the SEC. He further claims that the EEOC conspired to obstruct justice with the SEC in the processing of his administrative charge of discrimination. Plaintiff seeks $200,000,000 in compensation as front pay, back pay, health

Benefits, appointment to the position to which he applied and reasonable accommodations.

The Defendants have moved to dismiss Plaintiff's complaint on the grounds his claims are either time-barred,

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[2] See Docket Entry No. 1.

[3] See Docket Entry No. 49.

administratively not exhausted, or barred by sovereign immunity.

II. Motion to Dismiss Standard

Pursuant to the federal rules, dismissal of an action is appropriate whenever the complaint, on its face, fails to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b) (6). When considering a motion to dismiss, the court should construe the allegations in the complaint favorably to the pleader and accept as true all well-pleaded facts. Kane Enters. V. MacGregor (USA) Inc., 322 F.3d 371, 374 (5th Cir. 2003): Rolf v. City of San Antonio, 77 F.3d 823,m 827 (5th Cir. 1996). Dismissal of a claim is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the allegations which would entitle plaintiff to relief. Kane Enters., 322 F.3d at 374 (quoting Conley v. Gibson, 355 U. S. 41, 45-45 (1957)); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506 , 514 (2002). If the court considers matters beyond those in the pleadings, the motion must be treated as one for summary judgment. Fed. R. Civ. P. 12(B); Morin v. Caire, 77 F.3d 116, 123 (5th Cir. 1996).

III Analysis

In his Amended Complaint, Plaintiff advances a Title VII cause of action for sex and race discrimination against the SEC. Title VII protects prospective federal employees from discriminatory personnel actions based on "race, color, religion, sex or national origin." 42 U.S.C. § 2000e-16(a). He also claims discrimination on the basis of his age and disability under the ADEA and the Rehabilitation Act, respectively.

Defendant SEC argues that Plaintiff's Title VII, ADES, and Rehabilitation Act claims should be dismissed for lack of subject matter jurisdiction due to Plaintiff's failure to exhaust his administrative remedies. Defendant is correct in pointing out that Plaintiff must exhaust his remedies in the

administrative process before seeking judicial relief under Title VII. Barnes v. Levi, 118 F.3d 404, 408-09 (5th Cir. 1997); Frances v. Brown, 58 F.3d 191, 192 (5th Cir. 1995) (citing Brown v. Gen. Servs. Admin., 425 U.S. 820, 825 (1976)) : "[C]ourts have no jurisdiction to consider Title VII claims as to which the aggrieved party has not exhausted administrative remedies." Nat'l Ass'n of Gov't Employees v. City Pub. Serv., 40 F.3d 698, 711 (5th Cir. 1994) ; see also Porter v. Adams, 639 F.2d 273, 276 (5th Cir. 1981) (noting that exhaustion is "an absolute prerequisite" to suit under § 2000e – (16)).

To exhaust administrative remedies, a federal employee who believes he was discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap must first seek information counseling before he files an EEOC complaint. 29 C. F. R. § 1614.105(a). The applicable regulation specifically provides that, "an aggrieved person must initiate contact with a counselor within 45 days of the date of the matter alleged to be discriminatory or in the case of personnel action within 45 days of the effective date of the action." 29 C.F.R. § 1614.105 (a) (1). "If the employee fails to take this step, his claim is barred." Teemac v. Henderson, 298 F.3d 452, 454 (5th Cir. 2002) citing Pacheco v. Rice, 966 F.2d 904, 905 (5th Cir. 1992)).

Here, Plaintiff fails to allege that he exhausted his remedies at the administrative level. A review of documents attached to his original complaint reveals that, factually, Plaintiff cannot make such an allegation. In the document entitled, "Denial of Request for Reconsideration,"[4] the EEOC denied Plaintiff's request that the agency reconsider its earlier dismissal of Plaintiff's claims. The dismissal had been based on Plaintiff's failure to initiate contact with an EEO counselor within forty-five days.[5] Thus, it appears that Plaintiff failed

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[4] See Docket Entry No. 1, attached documents, Bates-stamped pages 1-4.

[5] Id., pages 3-4.

to contact an EEO counselor within forty-five days of the date he was notified that he would not be hired.[6] Such

a failure is fatal to his present claim unless the forty-five-day period is extended by equitable considerations. A Title VII plaintiff may circumvent the forty-five-day time limit by establishing the defense of equitable tolling. Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 111 (1990) (holding that Title VII's statutory time limits are subject to equitable tolling, even for federal employees); Teemac, 298 F.3d at 454; Pacheco, 966 F.2d at 906-07. The plaintiff bears the burden of demonstrating a factual basis to justify tolling the limitations period. Teemac, 298 F.3d at 457; Hood v. Sears, Roebuck & Co., 168 F.3d 231, 232 (5th Cir. 1999). Here, Plaintiff has failed to allege any fact that would constitute grounds for equitably tolling the forty-five-day time limitation. Therefore the court concludes he has failed to exhaust his administrative remedies within the requisite time frame.

A second ground for dismissal arises from the very same notice from the EEOC.[7] Also known as a "90-day letter,"

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[6] In fact, Plaintiff attaches a July 31, 2000, letter from the SEC which notified him that he was not hired because he was found to be not minimally qualified for the position. In another letter to the SEC. Plaintiff references two earlier letters received from the SEC, dated June 26, 2000, and July 17, 2000, which notified Plaintiff that he was not minimally qualified for two other positions to which he had applied. See Docket Entry No. 51, pp. 141-142. The court concludes that as of June and July 2000, Plaintiff was aware that he would not be hired by the SEC.

In light of this evidence, Plaintiff's assertion that he filed his administrative complaint within forty-five days of a November 13, 2000, letter denying reconsideration of the determination that Plaintiff was unqualified for the SEC positions misses the mark. The operative, date is the date he learned that he would not be hired, not the date he stopped his letter-writing campaign.

> the denial letter expressly stated: This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision.[8]

Both Title VII[9] and the ADEA require that a civil action be brought within ninety days of the receipt of a notice of a final agency action. 42 U.S.C. § 2000e-16©; 29 U.S.C. § 626(e). The letter from the EEOC was dated June 12, 2003. Plaintiff attaches the letter's envelope, which reveals a post-mark date of June 13, 2003, but claims he died not open it until June 18, 2003. Ninety days from the receipt[10] of the letter would place a deadline of September 15, 2003, to timely file this lawsuit. Plaintiff did not file this action, however, until September 22, 2003, a full week late. The Fifth Circuit has made clear that the requirement to file a civil action within ninety days is structly construed. Taylor v. Brooks a Million, Inc., 296 F.3d 376, 379 (5th Cir. 2002) (citing Ringgold v. Nat'l Maint. Corp.,

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[7] See Docket Entry No. 1, attached documents, Bates-stamped pages 1-4.

[8] Id (emphasis in original).

[9] A federal employee's sole avenue of relief for claims of disability discrimination is title VII. See Brown, 425 U.S. at 835.

[10] The fact that Plaintiff did not actually open the letter until June 18, 2003, is irrelevant and does not enter into the calculation of the ninety-day period. See Ringgold v. Nat'l Maintl Corp., 796 F2d 769, 770(5th Cir. 1986) (holding that "the 90-day period of limitation established by 42 U.S.C. § 2000e-5(f)(1) begins to run on the date that the EEOC right-to-sue letter is deliveredto the offices of formally designated counsel or to the claimant"); Nilsen v. City of Moss Point, Miss., 674 F2d 379, 381 (5th Cir. 1982) (holding that receipt of final agency action triggers the ninety-day period).

796 F.2d 769, 770 5th Cir. 1986)). Thus, Plaintiff's lawsuit is untimely.

As noted above, the time limits of Title VII and the ADEA are subject to equitable tolling. Baldwin County Welcome Ctr. V. Brown, 466 U.S. 147, 151-52 (1984). In his original complaint, Plaintiff alleges that he was admitted to the hospital on September 12, 2003, for rectal bleeding, a condition he claims was aggravated by the SEC. Plaintiff further alleges that September 16, 2003, was the first day he was able to resume writing.

The court construes this as a request for equitable tolling of the ninety-day period. In St. Louis v. Texas Worker's Compensation Commission, 65 F.3d 43 (5th Cir. 1995), cert. denied, 518 U.S. 1024 (1996), the plaintiff sought to equitably toll the limitations period for his age discrimination complaint. The Fifth Circuit, following Supreme Court precedent, found that several criteria were to be considered when evaluating q request for equitable tolling: first, whether the EEOC provided adequate notice to the complainant of his right to sue; second, whether a motion for appointment of counsel was ruled upon; third, whether the court itself had led the plaintiff to believe all filing requirements had been fulfilled; and fourth, whether affirmative misconduct on the part of the defendant lulled the plaintiff into inaction. Id. At 47 (citing Baldwin, 466 U.S. at 151). The St. Louis' court found the express

Language in the ninety-day letter put the plaintiff on notice of the need to act within ninety days and, thus, refused to extend the ninety-day limitations period. Id. a 47-48.

Likewise, Plaintiff was clearly on notice that he had ninety days within which to file suit. He has cited no case law that permits the equitable tolling of a limitations period due to health issues. In the court's opinion, a plaintiff's mere allegation of ill health within the last few days of the limitations period is simply not grounds for tolling. "Courts

within this Circuit have repeatedly dismissed cases in which the plaintiff did not file a complaint until after the ninety-day limitation period had expired." Taylor, 296 F.3d at 379. See, e.g., Bluitt v. Houston Indep. Sch. Dist., 236 F. Supp.2d 703, 712 (S.D. Tex. 2002) (finding dismissal appropriate where complaint was filed on the ninety-third day); Lee v. Powell, 2002 WL 31422959, at *3 (N.D. Tex. 2002), aff'd, Lee v. Tanoue, 2003 WL 22287542 (5th Cir. 2003) (upholding dismissal where complaint was filed on the ninety-second day); Thomas v. Exxon, U.S.A., 943 F. Supp. 751, 754 (S.D. Tex. 1996), aff'd 122 F.3d 1067(5th Cir. 1997) (finding dismissal appropriate where complaint was filed five days late). Because Plaintiff's complaint was filed late and he raises no meritorious grounds for equitably tolling the limitatons period, Plaintiff's claims under Title VII, the ADEA, and the Rehabilitation Act must be dismissed as untimely.

Finally, the court finds that Plaintiff's complaints that the SEC utilized the EEOC to harass and threaten him, that the EEOC accepted false and misleading affidavits in the processing of his administrative charge of discrimination, and that the SEC committed mail fraud, wire fraud, and obstructed justice are simply not actionable. It is well-settled that 42 U.S.C. §§ 1981, 1983, 1985, and 1986 do not apply to the United States or its agencies. Newsome v. EEOC, 301 F.3d 227, 233 (5th Cir. 2002); Unimex, Inc. v. U.S. Dep't of Hous. & Urban Dev., 594 F.2d 1060 (5th Cir. 1979) (stating that the United States has not waived its sovereign immunity under the federal civil rights statutes). Plaintiff's exclusive means of redress for grievances arising out of an employment relationship with the United States is Title VII, 42 U.S.C. § 2000e-16; all other claims are preempted. Brown, 425 U.S. at 829; see also Pfau v. Reed, 125 F.3d 927, 932 (5th Cir. 1997). Therefore, Plaintiff's claims against the SEC and EEOC for mail fraud, wire fraud, and other criminal violations are without any legal merit as well.

Conclusion

For the reasons discussed above, the court RECOMMENDS that the Defendants' Motion to Dismiss be GRANTED.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have ten days from the receipt thereof to file written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk, either electronically or by mail to P.O. Box 61010, Houston, Texas, 77208. Copies of such objections shall be mailed to opposing parties and to the chambers of the undersigned, 515 Rusk, Suite 11009, Houston, Texas 77002.

SIGNED in Houston, Texas, this 17th day of December, 2004.

/s_____
NANCY K. JOHNSON
UNITED STATES MAGISTRATE JUDGE

APPENDIX 8A

United States Courts, Southern District of Texas
ENTERED Dec. 17, 2004, Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW, et al., Plaintiff,
v. § CIVIL ACTION NO. H-04-66
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AND TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Defendants

MEMORANDUM AND RECOMMENDATION

= the remain text was left out only to show for it was =
= not needed, that purpose was to show that =
= Magistrate Judge Nancy K. Johnson =
= MEMORANDUMS AND RECOMMENDATION =
= For cases H-03-3878, H-04-66 ,H-04-67 =
= H-04-68, H-04-69, H-04-70 =
= =
= INDEPENDENT of EACH OTHER =
= =
= were all ISSUED and SENT to the Plaintiff on =
= the SAME day and =
= Some were SENT in the SAME ENVELOPE =
= WITH MALICE in order to perpetuate a =
= MISCARRIAGE OF JUSTICE against the Plaintiff =
= who had DOCUMENT WITH THE COURT =
= the plaintiff reading and writing =
= LEARNING DISABILITIES =

APPENDIX 9A

United States Courts, Southern District of Texas
ENTERED Dec. 17, 2004, Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW, et al., Plaintiff,
v. § CIVIL ACTION NO. H-0404-67
U. S. DEPARTMENT OF LABOR ,AND TEXAS
EMPLOYMENT COMMISSION, Defendants

MEMORANDUM AND RECOMMENDATION

= the remain text was left out only to show for it was =
= not needed, that purpose was to show that =
= Magistrate Judge Nancy K. Johnson =
= MEMORANDUMS AND RECOMMENDATION =
= For cases H-03-3878, H-04-66 ,H-04-67 =
= H-04-68, H-04-69, H-04-70 =
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= INDEPENDENT of EACH OTHER =
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= were all ISSUED and SENT to the Plaintiff on =
= the SAME day and =
= Some were SENT in the SAME ENVELOPE =
= WITH MALICE in order to perpetuate a =
= MISCARRIAGE OF JUSTICE against the Plaintiff =
= who had DOCUMENT WITH THE COURT =
= the plaintiff reading and writing =
= LEARNING DISABILITIES =

APPENDIX 10A

==========

United States Courts, Southern District of Texas
ENTERED Dec. 17, 2004, Michael N. Milby, Clerk of Court

==========

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

==========

JAMES B. VEASAW, et al., Plaintiff,
v. § CIVIL ACTION NO. H-04-68
U. S. DEPARTMENT OF EDUCATION, TEXAS REHABILITATION COMMISSION, GREG ABBOTT, TEXAS ATTORNEY GENERAL, AND TEXAS EMPLOYMENT COMMISSION, Defendants

MEMORANDUM AND RECOMMENDATION

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= the remain text was left out only to show for it was =
= not needed, that purpose was to show that =
= Magistrate Judge Nancy K. Johnson =
= MEMORANDUMS AND RECOMMENDATION =
= For cases H-03-3878, H-04-66 ,H-04-67 =
= H-04-68, H-04-69, H-04-70 =
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= INDEPENDENT of EACH OTHER =
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= the SAME day and =
= Some were SENT in the SAME ENVELOPE =
= WITH MALICE in order to perpetuate a =
= MISCARRIAGE OF JUSTICE against the Plaintiff =
= who had DOCUMENT WITH THE COURT =
= the plaintiff reading and writing =
= LEARNING DISABILITIES =

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APPENDIX 11A

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United States Courts, Southern District of Texas
ENTERED Dec. 17, 2004, Michael N. Milby, Clerk of Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

==========

JAMES B. VEASAW, et al., Plaintiff,
v. § CIVIL ACTION NO. H-04-69
U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. SOCIAL SECURITY ADMINISTRATION, Defendants

MEMORANDUM AND RECOMMENDATION

==========

= the remain text was left out only to show for it was =
= not needed, that purpose was to show that =
= Magistrate Judge Nancy K. Johnson =
= MEMORANDUMS AND RECOMMENDATION =
= For cases H-03-3878, H-04-66 ,H-04-67 =
= H-04-68, H-04-69, H-04-70 =
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= INDEPENDENT of EACH OTHER =
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= were all ISSUED and SENT to the Plaintiff on =
= the SAME day and =
= Some were SENT in the SAME ENVELOPE =
= WITH MALICE in order to perpetuate a =
= MISCARRIAGE OF JUSTICE against the Plaintiff =
= who had DOCUMENT WITH THE COURT =
= the plaintiff reading and writing =
= LEARNING DISABILITIES =

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APPENDIX 12A

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United States Courts, Southern District of Texas
ENTERED Dec. 17, 2004, Michael N. Milby, Clerk of Court

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

==========

JAMES B. VEASAW, et al., Plaintiff,
v. § CIVIL ACTION NO. H-04-70
ADVOCACY, INC AND MARY S, FAITFUL, EXECUTIVE DIRECTOR, Defendants

MEMORANDUM AND RECOMMENDATION

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= the remain text was left out only to show for it was =
= not needed, that purpose was to show that =
= Magistrate Judge Nancy K. Johnson =
= MEMORANDUMS AND RECOMMENDATION =
= For cases H-03-3878, H-04-66 ,H-04-67 =
= H-04-68, H-04-69, H-04-70 =
= =
= INDEPENDENT of EACH OTHER =
= =
= were all ISSUED and SENT to the Plaintiff on =
= the SAME day and =
= Some were SENT in the SAME ENVELOPE =
= WITH MALICE in order to perpetuate a =
= MISCARRIAGE OF JUSTICE against the Plaintiff =
= who had DOCUMENT WITH THE COURT =
= the plaintiff reading and writing =
= LEARNING DISABILITIES =

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APPENDIX 13A

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=== COURT STAMP CIRCLED TO SHOW ==

== the Court separation of case was a ==

== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005

Michael N. Milby, Clerk of Court

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO. H-03-3878

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, Defendants

ORDER

Before the Court is Magistrate Judge Nancy K. Johnson's Memorandum and Recommendation ("M&R") entered December 17, 2004 (Dkt.#52). The M&R is ripe for the Court's consideration because the period for filing written objections has passed. See 28 U.S.C. § 636(b)(1)(parties may file written objections to magistrate judges' findings and recommendations within ten days of filing). After considering the M&R, the entire record, and the applicable law, the Court hereby ADOPTS the M&R. Accordingly, Defendant secuites and exchange commission's and Equal Opportunity Commission's Motion to Dismiss (Dkt.#50) is GRANTED. SIGNED on this 3rd day of February, 2005.

s/
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 14A

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=== COURT STAMP CIRCLED TO SHOW ==

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== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-66

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, Defendants

ORDER

Before the Court is Magistrate Judge Nancy K. Johnson's Memorandum and Recommendation ("M&R") entered December 17, 2004 (Dkt.#8). The M&R is ripe for the Court's consideration because the period for filing written objections has passed. See 28 U.S.C. § 636(b)(1)(parties may file written objections to magistrate judges' findings and recommendations within ten days of filing). After considering the M&R, the entire record, and the applicable law, the Court hereby ADOPTS the M&R. Accordingly, Defendant Equal Opportunity Commission's Motion to Dismiss (Dkt.#5) and Defendant Texas Commission on Environmental Quality's Motion to Dismiss (Dkt.#4) are GRANTED. SIGNED on this 3rd day of February, 2005.

s/
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 15A

==========

UNITED STATES COURTS,
SOUTHERN DISTRICT OF TEXAS, ENTERED
FEB 04, 2005
Michael N. Milby, Clerk of Court

==========

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-67

UNITED STATES DEPARTMENT OF LABOR and TEXAS EMPLOYMENT COMMISSION,
Defendants.

ORDER

Before the Court is Magistrate Judge Nancy K. Johnson's Memorandum and Recommendation ("M&R") entered December 17,2004 (Dkt. #8). The M&R is ripe for the Court's consideration because the period for filing written objections has passed. See 28 U.S.C. § 636 (b) (1) (parties may file written objections to magistrate judges' findings and recommendations within ten days of filing). After considering the M&R, the entire record, and the applicable law, the Court hereby ADOPTS the M&R. Accordingly, Defendant Texas Employment Commission and Chairwoman Rath's Motion to Dismiss (Dkt. #5) and Defendant United States Department of Labor's Motion to Dismiss (Dkt. #4) are GRANTED.

SIGNED on this 3rd day of February, 2005.

_____s/_____
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 16A

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== COURT STAMP CIRCLED TO SHOW ==
== the Court separation of case was a ==
== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW, Plaintiff,

v. § CIVIL ACTION NO.H-04-68

UNITED STATES DEPARTMENT OF EDUCATION, TEXAS , REHABILITATION COMMISSION, GREG ABBOTT, TEXAS ATTORNEY GENERAL, and TEXAS , EMPLOYMENT COMMISSION,
Defendants.

ORDER

Before the Court is Magistrate Judge Nancy K. Johnson's Memorandum and Recommendation("M&R") filed December 17, 2004 (Dkt. #10). The M&R is ripe for the Court's consideration because the period for filing written objections has passed. See 28 U.S.C. § 636(b)(1)(parties may file written objections to magistrate judges' findings and recommendations within ten days of filing). After considering the M&R, the entire record, and the applicable law, the Court hereby ADOPTS the M&R. Accordingly, Defendant Greg Abbott, Texas Attorney General's Motion to Dismiss (Dkt. #4) and Chairwoman Diane D. Rath's Motion to Dismiss (Dkt. #5), Defendant Texas Rehabilitation Commission and Commissioner Vernon M. Arrell's Motion to Dismiss (Dkt. #6),

and Defendant United States Department of Education and Secretary Rod Paige's Motion to Dismiss (Dkt. #7) are all GRANTED. SIGNED on this 3rd day of February, 2005.

s/
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 17

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=== COURT STAMP CIRCLED TO SHOW ==

== the Court separation of case was a ==

== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-69

UNITED STATES DEPARTMENT OF LABOR and TEXAS EMPLOYMENT COMMISSION, Defendants.

WAS NEVER SENT TO THE PLAINTIFF

APPENDIX 18A

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=== COURT STAMP CIRCLED TO SHOW ==

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== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-70

ADVOCACY, INC.
Defendant.

ORDER

Before the Court is Magistrate Judge Nancy K. Johnson's Memorandum and Recommendation("M&R") filed December 17, 2004 (Dkt. #8). The M&R is ripe for the Court's consideration because the period for filing written objections has passed. *See* 28 C.§636(b)(1)(parties may file written objections to magistrate judges' findings and recommendations within ten days of filing). After considering the M&R, the entire record, and the applicable law, the Court hereby ADOPTS the M&R. Accordingly, Defendant Advocacy Indorporated and Mary S. Faithful's Motion to Dismiss (Dkt. #4) is GRANTED.

SIGNED on this 3rd day of February, 2005.

_____s/_____
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 19A

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== COURT STAMP CIRCLED TO SHOW ==
== the Court separation of case was a ==
== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

==========

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW, et al,
Plaintiff,

§ CIVIL ACTION NO.H-03-3878

v.

U.S. SECURITIES AND EXCHANGE, COMMISSION and EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Defendants

FINAL JUDGMENT

In accordance with the Court's Order of even date adopting the Magistrate Judge's Memorandum and Recommendation, this action is DISMISSED with prejudice.

This is a FINAL JUDGEMENT.

SIGNED on this 3rd day of February, 2005

s/
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 20A

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=== COURT STAMP CIRCLED TO SHOW ==
== the Court separation of case was a ==
== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-66

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Defendant.

ORDER OF DISMISSAL

In accordance with the Court's Order of even date adopting the Magistrate Judge's Memorandum and Recommendation, this action is DISMISSED with prejudice.

This is a FINAL JUDGEMENT.
SIGNED on this 3rd day of February, 2005.

s/
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 21A

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=== COURT STAMP CIRCLED TO SHOW ==
== the Court separation of case was a ==
== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

==========

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-67

UNITED STATES DEPARTMENT OF
LABOR and TEXAS EMPLOYMENT COMMISSION,
Defendants.

ORDER OF DISMISSAL

In accordance with the Court's Order of even date adopting the Magistrate Judge's Memorandum and Recommendation, this action is DISMISSED with prejudice. This is a FINAL JUDGMENT.

SIGNED on this 3rd day of February, 2005.

s/
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 22A

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=== COURT STAMP CIRCLED TO SHOW ==
== the Court separation of case was a ==
== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005
Michael N. Milby, Clerk of Court

==========

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-68

UNITED STATES DEPARTMENT
OF EDUCATION, TEXAS
REHABILITATION COMMISSION, GREG ABBOTT, TEXAS
ATTORNEY GENERAL, and TEXAS
EMPLOYMENT COMMISSION,
Defendants.

FINAL JUDGMENT

In accordance with the Court's Order of even date adopting the Magistrate Judge's Memorandum and Recommendation, this action is DISMISSED with prejudice.

This is the FINAL JUDGMENT.

SIGNED on this 3rd day of February, 2005.

_____s/_____
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 23A

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=== COURT STAMP CIRCLED TO SHOW ==

== the Court separation of case was a ==

== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005

Michael N. Milby, Clerk of Court

==========

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v. § CIVIL ACTION NO.H-04-69

UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES and SOCIAL SECURITY ADMINISTRATION,
Defendants.

ORDER OF DISMISSAL

In accordance with the Court's Order of even date adopting the Magistrate Judge's Memorandum and Recommendation, this action is DISMISSED with prejudice. This is a FINAL JUDGMENT.

SIGNED on this 3rd day of February, 2005.

_____s/_____
JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

Supreme Court, U.S.
FILED

10-295 JUN 15 2010

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES B. VEASAW - PETITIONER

Vs.

UNITED STATES,
Christopher Cox Chairman,
Unites States Securities and Exchanged Commission
- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI FROM
UNITED STATES FIFTH CIRCUIT COURT

PETITION FOR WRIT OF CERTIORARI

APPENDIX A VOL. 2 of 2

JAMES B. VEASAW
1511 Walnut Lane
Humble , TX, 77339

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APPENDIX 24A

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=== COURT STAMP CIRCLED TO SHOW ==

== the Court separation of case was a ==

== FRAUD ON COURT SCHEME ==

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UNITED STATES COURTS, SOUTHERN DISTRICT OF TEXAS, ENTERED FEB 04, 2005

Michael N. Milby, Clerk of Court

==========

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES B. VEASAW
Plaintiff,

v § CIVIL ACTION NO.H-04-70

ADVOCACY, INC.
Defendant.

FINAL JUDGMENT

In accordance with the Court's Order of even date adopting the Magistrate Judge's Memorandum and Recommendation, this action is DISMISSED with prejudice.

This is the FINAL JUDGMENT.

SIGNED on this 3rd day of February, 2005.

s/

JOHN D. RAINEY
UNITED STATES DISTRICT JUDGE

APPENDIX 25A

Supreme Court Of The Untied States
Office of the Clerk
Washington, DC 20543-0001

William K Suter
Clerk of the Court
(202) 479 3011

October 2, 2006

Mr. James Veasaw
1511 Walnut Lane
Humble, Tx 77339

Re: James B. Veasaw
v. Cari M. Dominguez, et al.
No. 05-1467

Dear Mr. Veasaw:

The Court entered the following order in the above-entitled case:

The Petition for writ of certiorari is denied.

Sincerly,
/S
William K.

Suter, Clerk

APPENDIX 26A

==========

GLOSSARY

DEFINITIONS:

Black's Law Dictionary (6th ed. 1991).

ACCRUE: (cause of action) Derived from the Latin, "ad" and "creso," to grow to. In the past tense, in sense of due and payable; vested. *Cause of action.* A cause of action " accrues " when a suit may be maintained thereon, and the law in regard differs from the state-to-state and by nature of action (e.g. type of breach of contract, tort, etc.). The point in time at which a cause of action " accrues " is important for the purposes of running the statues of limitations.

ACCRUED RIGHT : A accrued CAUSE OF ACTION, as legal authority to demand redress.

ACCRUE (taxation) : ... item "accrues " when all events occur which fix amount is payable and determine liability of taxpayer.

ACTIONABLE: That for which an action will lie, furnishing legal ground for an action. *See* Cause of action; justiciable controversy.

ACTUAL DAMAGES : Compensation for actual injury or loss. Term used to denote the type of damages awarded as well as the nature of injury for which recovery is allowed; thus actual damages flowing from the injury in fact are to be distinguished from damages which are nominal, exemplary or punitive. Actual damages are synonymous with " compensatory damages ".

APPEAL : A Complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed.

ARISE: To spring up, originate, to come into being or notice; to become operative, sensible, visible, or audible; to present itself. A cause of action or suit " arises ", so as to start running the limitations, when party has a right to apply to the proper tribunal for relief.

CAUSE OF ACTION: The Fact or Facts which give a person a Right to JUDICIAL redress or RELIEF against another.

CAUSE OF ACTION: The fact or Facts which give a person a right to judicial redress or relief against another.

COMPENSATORY DAMAGES : Compensatory damages are such as will compensate the injured party for injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury.... Compensatory or actual damages consist of both general and special damages.

COMPETENT COURT : A Court, either civil or criminal, having lawful jurisdiction.

CORRUPT: Spoiled; tainted; vitiated; depraved; debased; morally degenerate. As used as a verb, to change ones morals and principles from good to bad.

CORRUPTION: An act done with an intent to give some advantage inconsistent with official duty and rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. See Bribe; Extortion.

DUE PROCESS CLAUSE: Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects of procedures and substantive which protect a person's property from unfair government interference or taking. Similar clauses are in the most state constitutions. See Due process of law.

DUE PROCESS OF LAW: Law in it's regular course of administration through courts of justice. ... Due Process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life liberty, or property, in it's most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in which in the matter involved. ... Fundamental prerequisite of " due process " is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reason for such choice. Aside form all else; " due process" means fundamental fairness and substantial justice.
FRAUDULENT MISREPRESENTATION: A false statement as to material fact, made with the intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and does act to his injury, and statement is fraudulent if speaker knows statement is to be false or if it is made with utter disregard of its truth or falsity.

FRAUD UPON THE COURT: A scheme to interfere with judicial machinery performing task of impartial adjudication, as by preventing opposing party from fairly presenting his case or defense. ... It consists of conduct so egregious that it undermines the integrity of the judicial process .

GENERAL DAMAGES : Such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct, and proximate result, or such as necessarily result from the injury, or such as did in fact result from the wrong, directly and proximately and without reference to the special character, condition, or circumstances of the plaintiff.

GROUND OF ACTION: The basis of a suit; the foundation or fundamental state of facts on which an action rests (e.g. negligence; breach of contract); the real object of the plaintiff in bringing his suit. *See* Cause of action.

INJURY : Any wrong or damage done to another, either in his person, rights, reputation, or property.

JURISDICTION: A term of comprehensive import embracing every kind of judicial action. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction defines powers of courts to inquire into facts, apply the law, make decisions, and declare judgment. The legal right by which judges exercise their authority.

JUSTIFIABLE CONTROVERSY: A controversy in which a present and fixed claim of right is asserted against on one who has interest in contesting it; rights must be declared upon existing state of facts and not upon state of facts that may or may not arise in the future. ... courts will only consider a " justiciable " controversy , as distinguished from a hypothetical difference or dispute or one that is academic or moot.

JUSTIFIABLE HOMICIDE: Killing of another in self-defense when danger of death or serious bodily injury exist. Such homicide generally connotes only the use of force of force which is necessary, to resist other parties misconduct; and use of excessive force destroys the justification. an act which the law positively enjoins upon the perpetrator or positively permits him to perform, such a capital crime execution or the prevention of a crime or escape by a proper officer.

LEGAL FRAUD: Contracts or acts as, though not originating in actual evil design to perpetrate fraud, yet by their tendency to mislead others or to violate confidence, are prohibited by law. ... Misrepresentation of material fact made willfully to deceive, or recklessly without knowledge, and acted on by the opposite party to his damages constitutes "legal fraud". Synonymous with " constructive fraud".

MATTER IN CONTROVERSY: Subject of litigation; matter on which action is brought and issue is joined and in relation to which, if issue be one of fact, TESTIMONY is taken.

MERITS: As a legal term, refers to the strict legal rights of the parties. The substance, elements, or grounds of a cause of action or defense. *See* Ground of action.

QUANTUM : How much; as much as.

RES JUDICATA: A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgement. Rule that a final judgement rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.
Collateral estoppel compared. " Res judicata " bars relitigation of the same cause of action between the same parties where there is a prior judgement, whereas " collateral estoppel " bars relitigation of particular issue or determinative fact.

SPECIAL DAMAGES : Those which are the ACTUAL, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions.

TESTIMONY: EVIDENCE given by a Competent witness under oath or AFFIRMATION; as distinguished from evidence derived from WRITINGS, and other sources.

TYRANNY: Arbitrary or despotic government; the service an autocratic exercise o sovereign power; either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of government powers.

VIOLATION : Injury; infringement; breach of right, duty or law; ravishment; seduction.

WEBSTER NEW WORLD DICTIONARY 1990

ACCURATE: 1 careful and exact 2 free from error; precise

CORRECT: 1 to make right 2 to mark the errors of 3 to scold or punish 4 to cure or remove (a fault, etc) adj. 1 conforming to an established standard 2 true; accurate; right

CORRECTION: A correcting or being corrected 2 a change that corrects a mistake 3 punishment to correct faults

ERROR: 1 The state of believing what is untrue 2 a wrong belief 3 something incorrectly done; mistake 4 a transgression

IN : prefix no, not, without, NON,...

IN PROPERLY: 1 not suitable; unfit 2 incorrect 3 not in good taste

MISTAKE: to understand or perceive wrongly -vt to make a mistake - n an idea, answer, act, etc. that is wrong; error or blunder

PRECISE: Accurately stated; definite 2 minutely exact 3 strict; scrupulous; fastidious

APPENDIX 27A

Texas Tech University Counseling Center
Box 4160, Lubbock, Texas 79409, (806) 742-3674
Mr. James Veasaw November 5, 1987

Dear Mr. Veasaw: Extensive testing indicates you have identifiable learning problems in four areas of learning which are reading problems, math problems, writing problems and problems in listening-speaking. None of these problems should deny you a college training in Engineering. You might decide if you choose to complete a Technology degree first as a means of reaching your goals Computer Science.

Because these learning problems may be partially medical and partially developmental, the title language learning disability (LLD) does not apply to your four handicaps. This is called the exclusionary criteria which means that medical and developmental disabilities "override" LLD.
May I recommend you consider:

(1) Sharing these data with your Dean, Professor and others who have a need to know.
(2) Request untimed, private testing conditions where needed.
(3) Enroll for no more than two courses each semester.
(4) Enroll each semester for two vigorous physical activity courses of your choice and liking.

Mr. Veasaw, samples of your I.Q. range between 110 and 135 which places you between he upper forty percent and the upper five percent nationally.
Sincerely, ____/s____
William J. Carter, Ph.D. Rolf Gordhamer, Ph.D.
Counseling Psychologist, Director

APPENDIX 28A
APRIL GALLOP LAWSUIT

APRIL GALLOP LAW SUIT ITEM DISTRICT OF NEW YORK, NY 08-CV 10881 Item # III 33-34 III. The Attack on the Pentagon. 33. At the Pentagon, the plaintiff was at her desk, with her baby, in her office on the first floor, when large explosions occurred, walls crumbled and the ceiling fell in. Although her desk is just some forty feet from the supposed impact point, and she went out through the blown-open front of the building afterwards, she never saw any sign that an airliner crashed through. If Flight 77, or a substitute, did swoop low over the building, to create the false impression of a suicide attack, it was then flown away by its pilot, or remote control, and apparently crashed someplace else. At the building, inside or outside of the wall the plane supposedly hit, there was no wreckage, no airplane fragments, no engines, no seats, no luggage, no fuselage sections with rows of windows, and especially, no blazing quantities of burning jet fuel. The interior walls and ceilings and contents in that area were destroyed, but there was no sign of a crashed airplane. A number of those present inside the building and out have attested to this fact in published reports. 34. Instead, just when plaintiff turned on her computer — for an urgent document-clearing job she was directed by her supervisor to rush and begin, as soon as she arrived at work, without dropping her baby off at child care until she was finished — a huge explosion occurred, and at least one more that she heard and felt, and flames shot out of the computer. Walls crumbled, the ceiling fell in, and she was knocked unconscious. When she came to, terrified and in pain, she found the baby close by, picked him up, and, with other survivors caught in the area, made her way through rubble, smoke and dust towards daylight, which was showing through an open space that now gaped in the outside wall. When she reached the outside she collapsed on the grass; only to wake up in a hospital some time later.

APPENDIX 29A

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Growing Body Count Of
OKC
Bombing Witnesses Who Knew Too Much

From Discovery Channel Online
www.discovery.com
7-24-98

Hot on the heels of the latest information about the apparent treachery of the FBI, in regard to the TWA-800 SHOOTDOWN (and coverup), comes allegations of murders of several Oklahoma City Bombing survivors, particularly emergency workers present shortly after the blast.

Who would want to murder those emergency workers (including policemen)? If those emergency workers had become aware of information that the bombing was engineered by FBI, BATF and DEA agents, well, then the question sort of answers itself.

How does this relate to the 100+ BLAST SHELTERS that FEMA has been building all over the United States? If the information described in the article below is in fact accurate, the implications go FAR BEYOND some "building demolition" and a few witness murders. The entire situation might have been engineered to misdirect public attention toward large reductions of freedoms and constitutional rights. It would help prepare people for a more dictatorial government, that needs to violate rights "for the common good". Who would ultimately be in control of this government is itself an interesting topic.

Clearly, any of the OKC bombing emergency workers who believe they have something to say, had better do so soon, to a wide audience, while they still can.

Unresolved Death In Oklahoma By Michael A. O'Camb For Immediate Distribution 7-24-98

In the first minutes and hours following the blasts that devastated the Alfred P. Murrah Federal Building in downtown Oklahoma City, the morning of April 19, 1995, a number of selfless individuals risked life and limb to rescue many of the victims. Among them were Oklahoma City police officers, Terrance Yeakey, Gordon Martin and Ken Griffin, a number of Oklahoma City firefighters, Dr. H. Don Chumley, G.S.A. employee Mike Loudenslager and others.

In the aftermath of the "bombing" the name Mike Loudenslager holds particular significance in the hearts of many families in and around Oklahoma City. And this is so, because of the forewarning he gave to a number of those who had children in the Murrah Building's day-care center. In the weeks preceding the bombing, G.S.A. employee, Michael Loudenslager, 48, became increasingly aware that large amounts of ordnance and explosives were in the building and strongly urged (along with the operator of the day-care center) a number of parents to take their children out of the Murrah Building.

This situation arose after other employees became concerned with an increased amount of ordnance (missiles) being brought into the building by the B.A.T.F. and D.E.A. As a result of this concern, a grievance was filed with G.S.A. by the building's security director. The result was, the man who had complained lost his job there. Then, after the operator of the day-care center (the security director's wife) notified the fire marshals after some remodeling had been done (as her license required her to do), the fire marshals were denied access to do their inspection by federal agents and leave! And the day-care

operator lost her contract.

As a result of this (fearing the worst with all the talk around town of a possible bombing), Mike Loudenslager and the day-care center operator then told many of the parents to get their children out. And, because of their warnings, far fewer children were in the day-care center on that horrible Wednesday morning than there otherwise would have been. A number of families, in and around Oklahoma City, have these two people to thank for their children's lives today.

Shortly after the bombing, Michael Loudenslager was actively helping in the rescue and recovery effort. A large number of those at the bomb-site either saw or talked with him. During the course of the early rescue efforts, however, Mike Loudenslager was seen and heard in a very "heated" confrontation with someone (there). Much of his anger stemmed from the fact he felt the B.A.T.F. was in large part responsible not only for the bombing, but for the death and inury to those inside, including all the children.

To the absolute astonishment of a large number of police officers and rescue workers, it was later reported that G.S.A. employee Mike Loudenslager's body had been found inside the Murrah Building the following Sunday, still at his desk, a victim of the 9:02 A.M. bombing! This, mind you, after he'd already been seen alive and well by numerous rescue workers at the bomb-site AFTER the bombing! He is also officially listed as one of the 168 bombing fatalities.

The question now becomes: Was he murdered and placed at his desk by federal agents? Or was he just simply murdered by them and SAID to have been found at his desk? Access to the inside of the building, from shortly after the bombing onward was extremely limited to nearly all but federal employees by the F.B.I.

His death is UNQUESTIONABLY the most important sidelight of the Oklahoma City bombing. Mike Loudenslager's murder, most assuredly was one of the major factors leading to the demise of both Dr. H. Don Chumley and later Terry Yeakey!

For whatever reason, the Oklahoma City Police Dept. has always down-played Officer Terry Yeakey's presence at the Murrah Building the morning of April 19, 1995, even though a large number of Oklahoma City police officers, firefighters, emergency personnel and survivors KNOW he played a much larger role in the early rescue-effort than he's given credit for.

In an effort to cover up Mike Loudenslager's murder and to intimidate others who were there early-on that morning, someone has taken out a number of internal witnesses. Dr. Don Chumley AND Terry Yeakey, both, besides being at the Murrah Building that morning, shared one other commonality. Each at the time of his "death" was attempting to deliver EVIDENCE concerning the fact Mike Loudenslager was alive and well AFTER the bombing, and also to get certain other facts out about the "bombing" as well.

In Terry Yeakey's case he thought he was delivering evidence and information to a multi-county task force who would help get the truth out. That's how he was set-up. In Dr. Chumley's case, he was killed, some months earlier, when his personal jet aircraft "crashed" while attempting to do the same thing.

Were the deaths of Jack Colvert, Jackie Majors and Buddy Youngblood also directly related to the cover-up of Mike Loudenslager's murder? Each of them had been at the Murrah Building that morning and each had also seen Mike Loudenslager ALIVE and well after the bombing. on his life have been made. Other police officers and emergency services

personnel fear for their personal safety as well. And while all this goes on, the moguls of the major-media remain silent! The so-called "fourth pillar of democracy" - the press - once again falls flat on its face, foresaking its sacred duty to REPORT THE NEWS. Remember, Hell is just as hot for those who go there for sins of OMISSION as those who go for sins of COMMISSION!.

Another interesting case of "suicide" in Oklahoma, since the bombing, is that of Kenneth Trentadue, who as the result of violating conditions of his parole in California, was re-incarcerated and sent to a federal (transfer) facility in Oklahoma. Mr. Trentadue, the brother of a prominent Salt Lake City, Utah attorney, supposedly committed suicide by hanging himself. But in actuality managed to commit a "suicide" very similar to TerryYeakey's (minus the gunshot-wound-to-the-head). Only Kenneth Trentadue's was committed with knotted or "braided" bedsheet, barely long enough to fit around his neck in a "suicide-proof" prison cell.

THE SALT LAKE TRIBUNE later reported the trustees who cleaned Mr. Trentadue's cell after his "suicide" found copious amounts of blood inside. This included bloody fingerprints up a wall, to within a few inches of a "panic button" on or near the ceiling. This certainly is not consistent with hanging.

When his family was contacted by prison officials and informed of his "suicide", they were asked if they wanted his remains cremated. They indicated they did not, and after a very difficult time and much red-tape, the body was finally shipped back to them.

Being very skeptical as to a suicide, family members removed the mortuary make-up and were shocked to find part of his skull crushed, his knuckles damaged, bruises, puncture-and-slash-wounds over a good portion of his body (including the

soles of his feet) and his throat slashed. Boot heel marks were apparent around the right eye and on his chest. All evidence points to the fact Kenneth Trentadue was subdued after a fight - brutally beaten, tortured and murdered!

(Update: THE SALT LAKE TRIBUNE, Sat. July 11, 1998 - states M.E. says Trentadue death "suicide"!). This case is "supposedly" being looked into by U.S. Sen. Orrin Hatch.

Former 7-term U.S. Rep. George Hansen of Idaho and his organization, The United States Citizens Human Rights Commission, IS, however, actively pursuing it.

Former Rep. Hansen was himself unjustly convicted and imprisoned and spent a number of years literally as a political prisoner in the federal penal system until his case was finally decided by the U.S. Supreme Court.

Many Americans who are familiar with the Trentadue case see a chilling similarity between Officer Terry Yeakey's "suicide" and Kenneth Trentadue's. Especially when each occurred in such close proximity to the other, in and around El Reno and Oklahoma City, AFTER the bombing.

Like Terry Yeakey, Kenneth Trentadue, (although smaller) was also a powerfully-built man. He lifted weights regularly, had a 19-inch neck and was a street-fighter with street savvy. In short, he knew how to take care of himself.

Many now wonder if Kenneth Trentadue might have had information regarding the Oklahoma City bombing, or its aftermath, that certain agents wanted him taken-out for. And many also wonder why a man re-incarcerated for violating his parole would REQUEST solitary confinement. What was Kenneth Trentadue afraid of?

Could the murder of Murrah Building G.S.A. employee Michael Loudenslager and the subsequent cover-up

Others who were there that morning have also felt threatened. Officer Gordon Martin, for one, feels at least reason for (many of) the unresolved deaths in Oklahoma since the bombing? A growing number of Americans certainly think so.

APPENDIX 30A

TRANSCRIPT OF HURRAH FED. BUILDING SURVIVOR

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- Infowars -

http://www.infowars.com -

Murrah Federal Building Survivor Talks with Alex Jones

Posted By admin On April 21, 2010 @ 8:45 am In Featured Stories | Comments Disabled

Infowars.com

April 21, 2010

Jane Graham, a ninth floor survivor of the Murrah federal building bombing in Oklahoma City, told Alex Jones she believes the attack was an inside job. Graham talked with Alex Jones on April 20, 2010.

From the Oklahoma Bombing Cover-Up:

On July 20, 1997 Jane Graham, a ninth floor survivor of the Murrah federal building bombing in Oklahoma City, made a video affidavit after she watched the video "Cover-Up In Oklahoma." In that video, she recognized seeing two men who were caught on camera walking hurriedly away from the building after the bombing holding walkie-talkies. She says that she had noticed these men in the building prior to the bombing wearing General Services Administration (GSA) maintenance uniforms that she did not recognize as GSA employees. She previously wrote the following memo late last year which I am reposting for the benefit of those who have not seen seen it previously or heard of Jane Graham or this controversy before.

November 15, 1996 TO WHOM IT MAY CONCERN:

SUBJECT: MURRAH BUILDING BOMBING/INFORMATION AND MIS-INFORMATION

WHAT IS THE REAL TRUTH, WHY ARE PEOPLE NOT BEING PUT UNDER OATH? WHY IS INFORMATION BEING SCREENED TO DETERMINE WHAT IS PUT OUT TO THE PUBLIC AND GIVEN TO DEFENSE? WHY DOES THERE APPEAR A UNIFORM CONSPIRACY TO ONLY

GIVE PART OF THE FACTS/STATEMENTS/TRUTH ABOUT THE MURRAH BOMBING? FROM: JANE C.GRAHAM PUBLIC HOUSING SPECIALIST – FACILITIES MANAGEMENT DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND PRESIDENT, AFGE LOCAL 3138

This is my statement regarding the above. Approximately the last week of August, 1995, I contacted the FBI and spoke with a Mr. Joe Schwecke regarding the bombing and told him about events which I was aware of the week before the bombing. I made an appointment with him for Tuesday the 5th of September. HE never showed up. I again called and set up another appointment for the following week and that was never kept. On September 12, (I believe this is the correct date), I had and interview with a female agent in the Office of Native Americans/HUD at 500 W. Main, OKC. There were several agents there asking a set series of questions regarding the bombing as she explained to me. These same questions were asked to everyone within a 10 block radius. The questions were very basic, and few. When we were finished she said that was all and I said I was not finished. I told her of the previous report I had given Agent Schwecke and I wanted to know why no one asked questions about the week before the bombing and if anyone saw anything suspicious.

APPARENTLY THE FBI WAS NOT INTERESTED IN ANY TIME OTHER THAN THE MONDAY OR TUESDAY THE WEEK OF THE BOMBING!!!! AND ONLY IF THE RESPONSES POINTED DIRECTLY TO MCVEIGH. My question is why is it that they (FBI) were only interested if information was related to McVeigh? It appears that the FBI had and agenda which was to only target McVeigh and Nichols. The FBI conveniently dropped John Doe 2. Does the FBI believe that I as a citizen and a government employee and a survivor of the bombing, having been in the building at that time when it occurred, is so na•ve that I can't see through

what has and is being orchestrated by Washington? I contacted the FBI first by phone then by letter to inform them of three (3) men who I saw on the 2nd level of the parking garage the week before. The 2nd level of the parking garage is that level which is directly below the street level and customer parking.

These three men were standing just west of the double doors leading to the elevator, behind an older station wagon parked on the south side. They had a set of plans which appeared to be of the Murrah building. The reason I assumed the plans were of the Murrah building is they were obviously disagreeing on something and pointing to areas in the garage. Two of the men were approximately 5 8 and one man 6 1 ro 2 . Two men were brown hair, the tallest had very dark hair almost black and a mustache. He was wearing black cowboy boots, jeans and jacket and a cowboy hat. His hair was collar length. The other two men wore jeans one had a brown plaid short sleeved shirt and obviously lifted weights. At first I thought as I studied them they were with the phone company because I saw what looked like telephone wiring. Cream colored but short pieces. He also had a paper bag with something in it. We had been having some telephone difficulty off and on in the building and that was the first thing that popped in my mind. But then I thought why would they be in the garage? They are always on a floor at the closet area when they are fixing a problem and would not be in the garage. Next I thought they must be with the gas company.

There have been over the years gas leaks and maybe they were there for that purpose. As I studied these 3 men they were also watching me. At that time the man in the brown plaid shirt said something to the other man and he went to the station wagon and put the sack and wiring in the wagon behind the driver's seat and returned to the group. They watched me until I went through the doors to the elevator. I had first thought of going up to them but thought they must have approval to be there in the building and they did have

plans which they were discussing. The man in the brown shirt obviously knew what he was doing and was in charge even though you could tell there was disagreement among them. He reminded me of a surveyor or construction foreman except that I doubt that they would have been in that good of shape. These men were definitely physically well trained. I had intended to go to GSA but since I was in a hurry to get to work, I let it go by. Regrettably I wish now I had taken the time to go to GSA or to have gone up and talked to these men. When I first told my story the only question asked was "Was one of the men McVeigh?" I told the agent absolutely not. Then I was asked can I positively identify the three men? I told him I didn't think I could be positive, and NO ONE HAD ASKED ME TO VIEW ANY PICTURES OF ANYONE. I WOULD BE VERY INTERESTED IN SEEING WHO WAS STAFFED IN THE ATF, FBI AND SECRET SERVICE PRIOR TO THE BOMBING AND IF THESE MEN I SAW WERE EMPLOYED BY ANY OF THESE AGENCIES. I believe they were afraid I might be able to identify someone they did not want me to identify. I do have a good memory and I will continue to seek out and watch for these men to reappear and when I do I will confront them. This is not over. Also, Germaine Johnston, who also works for HUD saw and spoke to McVeigh perhaps as much as 10 minutes after in the alley where he was "parked" sitting outside his car on the ground around on the passengers side along with John Doe 2. McVeigh asked her if anyone was killed. She replied, yes a lot were. At that point shaken, he got into his car and drove off by himself. John Doe 2 departed on foot. Now I ask you, does that sound like a man who was running? I don't think so. It sounds like a plan that went awry or something he did not know was going to happen. These are just samples of stories which can be told and have not been given t the defense attorney. I DID FURNISH MY TESTIMONY TO JONES AS WELL AS FBI. GERMAINE FURNISHED HER'S TO THE FBI, THEY DID NOT GIVE THAT INFORMATION TO JONES. BUT HE HAS

BEEN TOLD ABOUT IT AND SHE WILL BE INTERVIEWED BY ONE OF HIS ASSOCIATES.

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APPENDIX 31A

LAWS

18 U.S.C. § 2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States.

18 U.S.C. § 2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and

make known the same to the President or to some judge of the United States,

, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both.

18 U.S.C. § 2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United

States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

18 U.S.C. § 2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. § 2385. Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize", with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

18 U.S.C. § 2441. War crimes

(a) Offense.— Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) Circumstances.— The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed

Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) Definition.— As used in this section the term "war crime" means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(d) Common Article 3 Violations.—

(1) Prohibited conduct.— In subsection (c)(3), the term "grave breach of common Article 3" means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) Torture.— The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) Cruel or inhuman treatment.— The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

(C) Performing biological experiments.— The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) Murder.— The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) Mutilation or maiming.— The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) Intentionally causing serious bodily injury.— The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(2) Definitions.— In the case of an offense under subsection (a) by reason of subsection (c)(3)—
(A) the term "severe mental pain or suffering" shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340 (2) of this title;
(B) the term "serious bodily injury" shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113 (b)(2) of this title;
(C) the term "sexual contact" shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246 (3) of this title;

(D) the term "serious physical pain or suffering" shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—
(i) a substantial risk of death;
(ii) extreme physical pain;
(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or
(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and
(E) the term "serious mental pain or suffering" shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term "severe mental pain or suffering" (as defined in section 2340 (2) of this title), except that—
(i) the term "serious" shall replace the term "severe" where it appears; and
(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term "serious and non-transitory mental harm (which need not be prolonged)" shall replace the term "prolonged mental harm" where it appears.

(3) Inapplicability of certain provisions with respect to collateral damage or incident of lawful attack.— The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

(A) collateral damage; or

(B) death, damage, or injury incident to a lawful attack.

(4) Inapplicability of taking hostages to prisoner exchange.— Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

(5) Definition of grave breaches.— The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

APPENDIX 32A

THE PRIVACY ACT OF 1974 EXCERPTS

5 U.S.C. § 552a As Amended

§ 552a. Records maintained on individual

(a) Definitions

(3) the term "maintain" includes maintain, collect, use or disseminate;

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint

committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of Title 31.

(e) Agency requirements

(10) establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(g)(1) Civil remedies

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently

a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section

in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy,

within two years from the date on which the cause of action arises,

except

that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section,

the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(m) Government contractors

(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of Title 31 shall not be considered a contractor for the purposes of this section.

APPENDIX 33A

JUDGES CANNON NUMBER 2

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"CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.

A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

COMMENTARY:

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety.

This prohibition applies to both professional and personal conduct.

A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code."

(emphasis added for clarity)

Supreme Court, U.S.
FILED

10-295 JUN 15 2010

No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES B. VEASAW - PETITIONER

Vs.

UNITED STATES,
Christopher Cox Chairman,
Unites States Securities and Exchanged Commission
- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI FROM
UNITED STATES FIFTH CIRCUIT COURT

PETITION FOR WRIT OF CERTIORARI

APPENDIX B

JAMES B. VEASAW
1511 Walnut Lane
Humble , TX, 77339

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BASIS FOR OUR CONSTITUTIONAL LAWS

Where right secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

Miranda v. Arizona, 384 US 436 p. 491.

BASIS FOR OUR CONSTITUTIONAL LAWS

The general rule is that an unconstitutional statue, though having form and name of law, is reality no law, but is wholly void, and ineffective for any purpose; since unconstitutional dates from the time of its enactment, and not merely from the date of the decision so branding it. No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

16 AM Jur 2d, Sec 177 late 2d, Sec 256.

BASIS FOR OUR CONSTITUTIONAL LAWS

" It will be observed that, in both the provisions of the Revised Statutes and of this latter act of Congress, the mode of review, whether by the Circuit Court of the judgment of an inferior court or justice or judge or by this court of the judgment of a Circuit Court, the word " appeal," and not "writ of error," is used, and as Congress has always used these words with a clear understanding of what is meant by them, namely, that, by a writ of error, only questions of law are brought up for review, as in actions at common law, while by an appeal, except when specially provided otherwise, the entire case on both law and facts is to be reconsidered, there seems to be little doubt that, so far as it is essential to a proper decision of this case, the appeal requires us to examine into the evidence brought to sustain or defeat the right of the petitioner to his discharge."

135 U.S. 1 In re Neagle [*]

APPENDIX B

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CAUSE OF ACTION ACCRUAL

Dismissing petitioner trust fund's suit as time barred, the Court of Appeals for the Ninth Circuit held that the statute of limitations runs from the date the employer withdraws from the plan. We reject that ruling. A limitations period ordinarily does not begin to run until the plaintiff has a "complete and present cause of action."

Rawlings v. Ray, 312 U.S. 96, 98, 61 S.Ct. 473, 474, 85 L.Ed. 605 (1941)... 16 * By its terms, the MPPAA's six-year statute of limitations runs from "the date on which the cause of action arose." 29 U.S.C. §1451(f)(1). This language, as we comprehend it, incorporates the standard rule that the limitations period commences when the plaintiff has "a complete and present cause of action." *Rawlings v. Ray,* 312 U.S., at 98, 61 S.Ct., at 474; see also *Clark v. Iowa City,* 20 Wall. 583, 589, 22 L.Ed. 427 (1875) ("All statutes of limitation begin to run when the right of action is complete . . . . "). Unless Congress has told us otherwise in the legislation at issue, a cause of action does not become "complete and present" for limitations purposes until the plaintiff can file suit and obtain relief. See *Reiter v. Cooper,* 507 U.S. 258, 267, 113 S.Ct. 1213, 1220, 122 L.Ed.2d 604 (1993) ("While it is theoretically possible for a statute to create a cause of action that accrues at one time for the purpose of calculating when the statute of limitations begins to run, but at another time for the purpose of bringing suit, we will not infer such an odd result in the absence of any such indication in the statute."). The MPPAA contains no indication that Congress intended to depart from the general rule.

Bay Area Laundry And Dry Cleaning Pension Trust Fund v. Ferbar Corporation Of California, Inc. , 522 U.S. 192, 118 S.Ct. 542, 139 L.Ed.2d 553 (1997)

APPENDIX B

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RICO / HOBBS ACT

Beck v. Prupis (98-1480) 529 U.S. 494 (2000) 162 F.3d 1090, affirmed.

Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); *Universal Oil Products Co. v. Root Refining Co.,* 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447 (1946). This "historic power of equity to set aside fraudulently begotten judgments," *Hazel-Atlas,* 322 U.S., at 245, 64 S.Ct., at 1001, is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." *Id.,* at 246, 64 S.Ct., at 1001. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. *Universal Oil, supra,* 328 U.S., at 580, 66 S.Ct., at 1179.

Chambers V. Nasco, Inc. ,501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27

CAUSE OF ACTION ACCRUAL

All statutes of limitation begin to run when the right of action is complete, and it would be exceptional and illogical to hold that the statute sleeps with respect to claims upon detached coupons, whilst a complete right of action upon such claims exists in the holder. We answer, therefore, the question certified to us, that the statute of Iowa which extends the same limitation to actions on all written contracts, sealed or unsealed, began to run against the coupons in suit from their respective maturities, and accordingly

Clark v. Iowa City, 87 U.S. 20 Wall. 583 583 (1874)

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CAUSE OF ACTION ACCRUAL

15 Our own Chief Justice [Fones] dissented from the majority opinion in Ford Motor Company v. Moulton, supra. We quote from his dissent:

"The following principles are stated concisely in Hodge v. Service Machine Company, 438 F.2d 347 (6th Cir.1971). 17 'A cause of action accrues when a suit may be maintained upon it. Black's Law Dictionary 37 (4th ed. 1951). A suit may not be brought upon a cause of action until it exists, and a cause of action does not exist until all its elements coalesce. In civil actions for damages, two elements must coalesce before a cause of action can exist: (a) a breach of some legally recognized duty owed by the defendant to the plaintiff; (b) which causes the plaintiff some legally cognizable damage.' 18

To hold that a products liability action, which is a recognized legal right, is barred by a statute of limitations before any injury is sustained, deprives a person of the opportunity of redress for an injury done him in his goods or person by due process of law, contrary to our Constitution. 511 S.W.2d at 697." 19 524 S.W.2d at 490. 20

Regarding Moulton, the McCroskey Court stated that it did not need to reach the retroactivity--i.e. vested rights--question. However, the Court did make the following observation: 'We, therefore, neither reaffirm nor reverse Ford Motor Co. v. Moulton, but we have quoted, with approval, from the dissent of our present Chief Justice.'

Clay v. Johns-Manville Sales corp., 722 F.2d 1289 (6th Cir. 1983 -1984)

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FRAUD / FRAUD (UP)ON COURT

90 We consider whether the conduct outlined herein constitutes fraud on the court or attorney misconduct sufficiently serious to require corrective action on our part. A. 91 Fraud on the court is a somewhat nebulous concept usually discussed in civil cases. No court system can function without safeguards against actions that interfere with its administration of justice. This concern must be balanced against the necessity for finality of court judgments; thus, only actions that actually subvert the judicial process can be the basis for upsetting otherwise settled decrees. 92 Professor Moore's definition is frequently cited: 93 Fraud upon the court should ... embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct. .

... The Supreme Court held in Brady that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. The Special Master stated that he believed the Brady rule should govern, but confined his analysis to fraud on the court in a civil context, because the Supreme Court had never stated that the Brady rule applies in civil cases.

Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993)

PRIVACY ACT

Doe v. Chao, Secretary of Labor 540 U.S. 614 (2004)

PRIVACY ACT

29 The Government argues that this language stands for the proposition that actual damages are *part of* the underlying cause of action and that by failing to show actual damages, Doe may not now recover costs and fees. We disagree. We understand the Supreme Court's language as stating what must be shown (or proved) in order to *prevail* under the cause of action created by subsection (g)(4) in order to be entitled to the remedy delineated in (g)(4)(A). In other words, in order to succeed on the underlying cause of action *and* be entitled to a *remedy* of actual damages, a litigant must show actual damages. Because he could not show actual damages, Doe was *not entitled to monetary relief* for the violation of the underlying cause of action that Congress created with the Privacy Act.

Doe v. Chao, Secretary of Labor 435 F.3d 492 (4th Cir. 2006)

PRIVACY ACT

The Supreme Court granted certiorari to decide whether "some actual damages must be proven before a plaintiff may receive the minimum statutory award" under the Privacy Act. *See Doe v. Chao,* 540 U.S. 614, 124 S.Ct. 1204, 1206, 157 L.Ed.2d 1122 (2004) (*Doe III*). The Supreme Court affirmed the judgment of this Court on February 24, 2004, holding that Doe was not entitled to an award of statutory damages because he failed to show any actual damages. *Id.* at 1212.

Doe v. Chao, Secretary of Labor 435 F.3d 492 (4th Cir. 2006)

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CAUSE OF ACTION ACCRUAL

Although we borrow the statute of limitations for plaintiffs' Title II claims from state law, federal law governs the claims' accruals. *Jenson v. Snellings*, 841 F.2d 600, 606 (5th Cir. 1988). A claim ordinarily accrues when a plaintiff has "'a complete and present cause of action'" or, stated differently, "when 'the plaintiff can file suit and obtain relief.'" *Wallace v. Kato*, 549 U.S. 384, 388 (2007) (quoting *Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., Inc.*, 522 U.S. 192, 201 (1997) (citations omitted)); *Walker*, 550 F.3d at 414. A statute may specify an accrual date by "explicit command." *See TRW Inc. v. Andrews*, 534 U.S. 19, 27 (2001). An accrual date may also be implied by "the structure and text of the particular statute." *Id.* at 27; *Disabled in Action of Penn. v. Southeastern Penn. Transp.*, 539 F.3d 199, 209 (3d Cir. 2008)

As the majority notes, "[a] claim ordinarily accrues when a plaintiff has 'a complete and present cause of action' or, stated differently, when 'the plaintiff can file suit and obtain relief.'" Maj. Op. at 11 (quoting *Wallace*, 549 U.S. at 388). Only congressional guidance can allow us to deviate from this general rule. Indeed, the Supreme Court has admonished that "[w]hile it is theoretically possible for a statute to create a cause of action that accrues at one time for the purpose of calculating when the statute of limitations begins to run, but at another time for the purpose of bringing suit, we will not infer such an odd result in the absence of any such indication in the statute." *Reiter v. Cooper*, 507 U.S. 258, 267 (1993). As the Supreme Court has further explained, "Unless Congress has told us otherwise in the legislation at issue, a cause of action does not become 'complete and present' for limitations purposes until the plaintiff can file suit and obtain relief." *Bay*

Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192, 201 (1997).
A plaintiff does not have a complete and present cause of action and cannot file suit and obtain relief until, inter alia, he or she has standing, which in turn requires the plaintiff to suffer an "injury in fact." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Thus, an essential question (and one I think the majority overlooks) is when these particular plaintiffs suffered an injury in fact.
Frame v. City of Arlington, No. 08-10630 (5th Cir. 2009)

FRAUD / FRAUD (UP)ON COURT
Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Mr. Justice ROBERTS. 24 No fraud is more odious than an attempt to subvert the administration of justice. The court is unanimous in condemning the transaction disclosed by this record. Our problem is how best the wrong should be righted and the wrongdoers pursued.
Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944)

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FRAUD / FRAUD (UP)ON COURT

2 Actions for fraud upon the court are so rare that this Court has not previously had the occasion to articulate a legal definition of the concept. The concept of fraud upon the court challenges the very principle upon which our judicial system is based: the finality of a judgment. The presumption against the reopening of a case that has gone through the appellate process all the way to the United States Supreme Court and reached final judgment must be not just a high hurdle to climb but a steep cliff-face to scale. 3 In order to meet the necessarily demanding standard for proof of fraud upon the court we conclude that there must be: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court.1 We further conclude that a determination of fraud on the court may be justified only by "the most egregious misconduct directed to the court itself," and that it "must be supported by clear, unequivocal and convincing evidence." *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions,* 538 F.2d 180, 195 (8th Cir.1976) (citations omitted).

... As noted above, we will employ a demanding standard for independent actions alleging fraud upon the court requiring: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) that in fact deceives the court. We agree with the Court of Appeals of the Eighth Circuit that the fraud on the court must constitute "egregious misconduct ... such as bribery of a judge or jury or fabrication of evidence by counsel." *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions,* 538 F.2d at 195 (citations omitted).

Herring v. United States of America., 424 F.3d 384 (3rd Cir. 2005)

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CAUSE OF ACTION ACCRUAL

For reasons which will be considered fully below, in Jackson, the plaintiff's cause of action 'accrued' on the date of sale of the automobile. In the instant case, the Appellant's cause of action did not 'accrue' until he was injured; therefore, the statute could not begin to run before that date.

12

A cause of action accrues when a suit may be maintained upon it. Black's Law Dictionary 37 (4th ed. 1951). A suit may not be brought upon a cause of action until it exists, and a cause of action does not exist until all its elements coalesce. In civil actions for damages, two elements must coalesce before a cause of action can exist: (a) a breach of some legally recognized duty owed by the defendnat to the plaintiff; (b) which causes the plaintiff some legally cognizable damage. *Hodge v. Service Machine Company , 438 F.2d 347 (6th Cir 1971)*

DEFECTIVE PLEADING

But an examination of the cases in which we have applied the equitable tolling doctrine as between private litigants affords petitioner little help. Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period,3 or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass.4 We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. *Baldwin County Welcome Center v. Brown,* 466 U.S. 147, 151, 104 S.Ct. 1723, 1725, 80 L.Ed.2d 196 (1984). Because the time limits imposed by Congress in a suit against the Government involve a waiver of sovereign immunity, it is evident that no

more favorable tolling doctrine may be employed against the Government than is employed in suits between private litigants.
Irwin v. Dept. of Veterans Affairs, 498 U.S. 89, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990)

MUST SHOW ACTUAL DAMAGES
(PRIVACY ACT)
The Eighth Circuit has stated that "[a]lthough it is admittedly difficult to place a value upon the resulting emotional injury from the deprivation of a constitutional right, the common law has historically recognized a reasonable, and sometimes substantial, sum of damages for mental distress." Williams v. Trans World Airlines, Inc., 660 F.2d 1267, 1273 (8th Cir.1981).13 Finally, the D.C. Circuit, finding recovery for established emotional distress and mental anguish appropriate for violation of fourth amendment rights,14 stated: 43 This court has held that in cases involving constitutional rights, compensation "should not be approached in a niggardly spirit. It is in the public interest that there be a reasonably spacious approach to a fair compensatory award for denial or curtailment of the right * * * " Specifying such damages will always be difficult, but they must be at least "an amount which will assure [the plaintiff] that [personal] rights are not lightly to be disregarded and that they can be truly vindicated in the courts. 44 Halperin v. Kissinger, 606 F.2d 1192, 1208 (D.C.Cir.1979), aff'd by an equally divided Court in part, cert. dismissed in part, 452 U.S. 713, 101 S.Ct. 3132, 69 L.Ed.2d 367 (per curiam), reh'g denied, 453 U.S. 928, 102 S.Ct. 892, 69 L.Ed.2d 1024 (1981).
Johnson v. Dept. of Treasury, 700 F.2d 971 (5th Cir. 1983)

BASIS FOR OUR CONSTITUTIONAL LAWS
All laws which arerepugnant to the Constitution are null and void.
Marbury v. Madison, 5 US (2 Cranch) 137, 174, 176, (1803).

31 Second, BOP argues that even if appellants have viable Privacy Act claims, they may not obtain damages because they have failed to show that any violations were "intentional or willful." *See* 5 U.S.C. § 552a(g)(4) (establishing that in a suit against an agency for failure to comply with specified Privacy Act provisions, the court must determine that the agency behaved intentionally or willfully before awarding damages). Because this issue is a question of fact entirely undeveloped in the record, however, it provides no basis for summary judgment at this time. Moreover, should the question of damages arise on remand, that issue will be controlled by *Doe v. Chao,* in which the Supreme Court held (following oral argument in this case) that plaintiffs seeking monetary relief under the Privacy Act must show *actual* damages. *See* 124 S.Ct. at 1212
Maydak v. United States, 363 F.3d 512 (DC Cir. 2004)

BASIS FOR OUR CONSTITUTIONAL LAWS
Where right secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.
Miranda v. Arizona, 384 US 436 p. 491.

RES JUDICATA
Under federal law, an action is barred by the doctrine of res judicata if (1) the parties are identical or in privity in both the instant action and a prior action; (2) the prior judgment was rendered by a court of competent jurisdiction;
(3) the prior judgment was final on the merits; and
(4) the cases involve the same cause of action.
Nagle v. Lee , 807 F.2d 435, 439 (5th Cir. 1987).

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DISCRIMINATION

17 We derive several principles from these cases. First, discrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the 180- or 300-day time period after the discrete discriminatory act occurred. The existence of past acts and the employee's prior knowledge of their occurrence, however, does not bar employees from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves timely filed. Nor does the statute bar an employee from using the prior acts as background evidence in support of a timely claim. 18 As we have held, however, this time period for filing a charge is subject to equitable doctrines such as tolling or estoppel. See *Zipes* v. *Trans World Airlines, Inc.,* 455 U. S. 385, 393 (1982) 20 Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable "unlawful employment practice." Morgan can only file a charge to cover discrete acts that "occurred" within the appropriate time period.

National Railroad Passenger Corporation v. Morgan., 536 U.S. 101 (2002)

BASIS FOR OUR CONSTITUTIONAL LAWS

An unconstitutional act is not law; it confers no rights; it imposes no duties; afford no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.

Norton v. Shelby County 118 US 425 p.442.

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23 5 U.S.C. § 552a(b). If an agency, acting intentionally or willfully, violates this command "in such a way as to have an adverse effect on an individual," Congress has authorized the filing of a civil action for damages by the affected individual. Id. § 552a(g)(1). Both "actual damages sustained by the individual" and statutory minimum damages of $1,000 are available, along with attorney's fees. *Id.* § 522a(g)(4).
24 In sum, the key elements of a cause of action under the Privacy Act for damages for disclosure are: 25 (1) agency disclosure (by any means of communication) 26 (2) to an individual or another agency 27 (3) of a "record" contained "in a system of records" 28 (4) which is unauthorized by the individual, and 29 (5) which is not within an exception 30 (6) and has an "adverse effect" on the individual (a requirement which contains two components: (i) an adverse effect standing component (ii) a causal nexus between the disclosure and the adverse effect) 31 (7) and that the agency action be in a manner which was "intentional" or "willful," which means proof somewhat greater than gross negligence.
Orekoya v. Mooney, 330 F.3d 1 (1st Cir. 2003)

Fraud on the court, though not easily defined, can be characterized as a scheme to interfere with the judicial machinery performing the task of impartial adjudication, as by preventing the opposing party from fairly presenting his case or defense. Kupferman v. Consolidated Research & Manufacturing Corp., 459 F.2d 1072, 1078 (2d Cir. 1972); England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960); see Annot., 19 A.L.R.Fed. 761 (1974). A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel, United States v. International Telephone & Telegraph Corp., 349 F.Supp. 22, 29 (D.Conn.1972), aff'd sub nom. Nader v. United States, 410

U.S. 919, 93 S.Ct. 1363, 35 L.Ed.2d 582 (1973); 7 J. Moore, Federal Practice P 60.33, at 515 (2d ed. 1976), and must be supported by clear, unequivocal and convincing evidence. Barr Rubber Products Co. v. Sun Rubber Co., 425 F.2d 1114, 1120 (2d Cir.), cert. denied, 400 U.S. 878, 91 S.Ct. 118, 27 L.Ed.2d 115 (1970).
Pfizer , Inc. v.. International Rectifier Corp. , 190 U.S.P.Q. 273 (8th Cir. 1976)

CAUSE OF ACTION / ACCRUAL
The words "after the cause of action shall accrue" in the Arkansas statute have their usual meaning, and refer to "a complete and present cause of action." Holloway v. Morris,@ 182 Ark. 1096, 1099, 34 S.W.2d 750, 752. The question as to the time when there was a complete and present cause of action so that the receiver could enforce by suit the liability imposed by the Comptroller's assessment is a federal question, and turns upon the construction of the assessment and the authority of the Comptroller to make it under the applicable federal legislation. While the assessment was made on November 6, 1935, it was expressly made payable on or before December 13, 1935. Respondent was allowed until that date to pay, and, prior thereto, suit could not be maintained against him. Hence, the statute of limitations did not begin to run until December 13, 1935, and the suit was in time.
Rawlings v. Ray, 312 U.S. 96 (1941)

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CAUSE OF ACTION / ACCRUAL

The opinion noted that "if Congress had intended that the cause of action of the shipper to recover damages for unreasonable charges should accrue when the shipment was received, or when it was delivered by the carrier, . . . a simple and obvious form for expressing that intention would have been used." *Ibid.* Within two years, Congress enacted a simple and obvious provision stating that any "cause of action in respect of a shipment of property shall . . . be deemed to accrue upon delivery or tender of delivery." Transportation Act, 1920, § 424, 41 Stat. 492. That provision survives in substantially the same form in text now codified at 49 U.S.C. § 11706(g).

Reiter v. Cooper, 507 U.S. 258, 113 S.Ct. 1213, 122 L.Ed.2d 604 (1993)

FRAUD / FRAUD (UP)ON COURT

13 Under the doctrine of claim preclusion, " [a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Moitie,* 452 U.S., at 398, 101 S.Ct., at 2428; see also *Baker v. General Motors Corp.,* 522 U.S. ----, ----, n. 5, 118 S.Ct. 657, 664, n. 5, 139 L.Ed.2d 580 (1998) ("a valid final adjudication of a claim precludes a second action on that claim or any part of it"). Claim preclusion (res judicata), as Rule 8(c) of the Federal Rules of Civil Procedure makes clear, is an affirmative defense. See also *Blonder-Tongue Laboratories, Inc. v. University of Ill. Foundation,* 402 U.S. 313, 350, 91 S.Ct. 1434, 1453, 28 L.Ed.2d 788 (1971) ("Res judicata and collateral estoppel [issue preclusion] are affirmative defenses that must be pleaded.") (italics omitted).

14 A case blocked by the claim preclusive effect of a prior federal judgment differs from the standard case governed by a completely preemptive federal statute in this critical respect:

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The prior federal judgment does not transform the plaintiff's state-law claims into federal claims but rather extinguishes them altogether. See *Commissioner v. Sunnen,* 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948) ("The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment."). Under the well-pleaded complaint rule, preclusion thus remains a defensive plea involving no recasting of the plaintiff's complaint, and is therefore not a proper basis for removal.

Rivet v. Regions Bank of Louisiana,522 U.S. 470, 118 S.Ct. 921, 139 L.Ed. 2d 913
(1998)

FRAUD / FRAUD (UP)ON COURT

Traveler's Indemnity Co. v. Gore, 761 F.2d 1549 (11th Cir.1985) (per curiam) (affirmed on opinion of district court), defines "fraud on the court" as:

16 embrac[ing] only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct.

17 Id. at 1551 (quoting 7 J. Moore & J. Lucas, Moore's Federal Practice, para. 60.33). Both the United States and Florida Supreme Courts recognize the distinction between fraud between the parties and fraud on the court. Fraud between the parties must be brought to the court's attention within one year after judgment is entered.

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Fraud that prevents the functioning of the judicial process does not have to be brought within any specific period of time. See, e.g., Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); DeClaire v. Yohanan, 453 So.2d 375 (Fla.1984).
Securities & Exchange Commission v. ESM Group, INC.,835 F.2d 270 (11th Cir. 1988)

MERITS / ACTIONABLE
Steel Co. v. *Citizens for Better Environment*, 523 U. S. 83 (1998), clarified that a federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) and the parties (personal jurisdiction). See *id.*, at 93–102. "Without jurisdiction the court cannot proceed at all in any cause"; it may not assume jurisdiction for the purpose of deciding the merits of the case. *Id.*, at 94 (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1869)).
Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U. S. ___ (2007)

FEDERAL TORT CLAIMS ACT
The FTCA "was designed primarily to remove the sovereign immunity of the United States from suits in tort and, with certain specific exceptions, to render the Government liable in tort as a private individual would be under like circumstances." *Richards* v. *United States*, 369 U.S. 1, 6 (1962); see also 28 U.S.C. § 2674. The Act accordingly gives federal district courts jurisdiction over claims against the United States for injury "caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person,

would be liable to the claimant in accordance with the law of the place where the act or omission occurred." §1346(b)(1). *Sosa v. Alvarez-Machain (03-339) 542 U.S. 692 (2004), 331 F.3d 604, reversed.*

MERITS / ACTIONABLE

We decline to endorse such an approach because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers. This conclusion should come as no surprise, since it is reflected in a long and venerable line of our cases. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex parte McCardle,* 7 Wall. 506, 514 (1869). "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U.S., *supra,* at 453. The requirement that jurisdiction be established as a threshold matter "spring[s] from the nature and limits of the judicial power of the United States" and is "inflexible and without exception." *Mansfield, C. & L. M. R. Co.* v. *Swan,* 111 U.S. 379, 382 (1884).

Steel Company v. Citizens For A Better Environment, 523 U.S. 83 (1998)

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DEFECTIVE PLEADING

7 "The accrual of a cause of action means the right to institute and maintain a suit, and whenever one person may sue another a cause of action has accrued."13 Swift's causes of action are for negligence and breach of fiduciary duty based upon negligence. Damages are an essential element of each of these theories.14 Therefore, some form of legal injury must occur before these causes of action accrue.15 But, it is not necessary to know immediately the type and extent of that injury.16 All that is needed is a specific and concrete risk of harm to the party's interest.17 These rules are well-established. Recent cases applying these rules have muddied the waters, however. The basic problem is that the issue of accrual of a cause of action rarely occurs apart from the issue of when the statute of limitations begins to run for a particular cause of action. These are two separate and distinct issues aimed at very different problems.18 8 The accrual of a cause of action is a concept closely tied to the fundamental purpose of a cause of action--to make an injured party whole.19 Damages, then, are a prerequisite to a cause of action.20 Without damages, there is no injury to remedy.

notes: 19 "The purpose of actual damages in civil actions is to compensate the injured plaintiff, rather than to punish the defendant. Consequently, a prevailing plaintiff is entitled to actual damages that will most nearly put him in the position that he would have been, but for the defendant's negligence." Deloitte & Touche v. Weller, 1997 WL 572530 (Tex.Ct.App.1997) (internal citations omitted)
Swift v. Swift, 129 F.3d 792 (5th Cir. 1997)

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Perjury and fabricated evidence are evils that can and should be exposed at trial, and the legal system encourages and expects litigants to root them out as early as possible.... Fraud on the court is therefore limited to the more egregious forms of subversion of the legal process, ... those we cannot necessarily expect to be exposed to by the normal adversary process. Great Coastal Express, 675 F.2d at 1357.
Travelers Indemnity Company v. Gore, 761 F.2d 1549 (11th Cir. 1985)

CAUSE OF ACTION / ACCRUAL It is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." Duncan v. Walker, 533 U.S. ___, ___ (2001) (slip op., at 6) (internal quotation marks omitted); see United States v. Menasche, 348 U.S. 528 , 538-539 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.' " (quoting Montclair v. Ramsdell, 107 U.S. 147 , 152 (1883))). "[W]ere we to adopt [Andrews'] construction of the statute," the express exception would be rendered "insignificant, if not wholly superfluous." Duncan, 533 U.S., at ___ (slip op., at 5). We are "reluctant to treat statutory terms as surplusage in any setting," id., at ___ (slip op., at 6) (internal alteration and quotation marks omitted), and we decline to do so here.5

NOTES: 5
Similarly, even if we agreed that the discovery and equitable estoppel doctrines could comfortably coexist in this setting, we would reject the contention that we are therefore free to incorporate both into the FCRA. As we have explained, see supra, at 7-8, we read Congress' codification of one judge-made doctrine not as a license to imply others, but rather as an intentional rejection of those it did not codify.

Noting that the FCRA's substantive provisions tie "liability" to the presence of "actual damages," §§1681n, 1681o, and that "arise" means at least "to come into existence," Andrews concludes that "liability arises" only when actual damages materialize. Not until then, she maintains, will all the essential elements of a claim coalesce: "duty, breach, causation, and injury." Brief for Respondent 23; see Hyde v. Hibernia Nat. Bank, 861 F.2d 446, 449 (CA5 1988) ("The requirement that a consumer sustain some injury in order to establish a cause of action suggests that the statute should be triggered when the agency issues an erroneous report to an institution with which the consumer is dealing.").

31 Accordingly, Andrews asserts, her claims are timely: The disputed "liability" for actual damages did not "arise" until May 1995, when she suffered the emotional distress, missed opportunities, and inconvenience cataloged in her complaint; prior to that time, "she had no FCRA claim to bring," Brief for Respondent 24 (emphasis omitted). Cf. Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192 , 200-201 (1997) (rejecting construction of statute under which limitations period would begin running before cause of action existed in favor of "standard rule" that the period does not commence earlier than the date "the plaintiff can file suit and obtain relief ").6

NOTES: 6 The opinion concurring in the judgment rips Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192 , 201 (1997), from its berth, see post, at 1, 3; we here set the record straight. The question presented in Bay Area Laundry was whether a statute of limitations could commence to run on one day while the right to sue ripened on a later day. We answered that question, and only that question, "no," unless the statute indicates

otherwise. See Bay Area Laundry, 522 U.S., at 200-201. Continuing on beyond the place where the concurrence in the judgment leaves off, we clarified: "Unless Congress has told us otherwise in the legislation at issue, a cause of action does not become 'complete and present' for limitations purposes until the plaintiff can file suit and obtain relief. See Reiter v. Cooper, 507 U.S. 258 , 267 (1993) ("While it is theoretically possible for a statute to create a cause of action that accrues at one time for the purpose of calculating when the statute of limitations begins to run, but at another time for the purpose of bringing suit, we will not infer such an odd result in the absence of any such indication in the statute.")." Id., at 201.
TRW Inc. v. Andrews, 534 U.S. 19, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001)

FRAUD / FRAUD (UP)ON COURT

Moreover, the cases only discuss loss in "a narrow financial sense," *Schneider,* 930 F.2d at 558, and one of the cases recognized that fraud through "nonmonetizable losses" exists where a contractor imposes a risk of loss on his employer by misrepresenting that he meets the qualifications required by his employer or otherwise fraudulently denies the employer of value for which he contracted, *see id.* We have not suggested that a mail fraud scheme must actually cause a financial loss to the victim; merely that a scheme to defraud a victim of money or property, if successful, must wrong the victim's property rights in some way. *See McNally,* 483 U.S. at 358-59, 107 S.Ct. 2875. Unlike fraudulent contract procurement schemes in which the employer is deprived of value for which it contracted or control over its money, the scheme alleged in the indictment implicates none of Livingston Parish's property rights.
United States v. Ratcliff, 488 F.3d 639 (5th Cir. 2007)

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CAUSE OF ACTION / ACCRUAL
MUST SHOW ACTUAL DAMAGES
(PRIVACY ACT)
DEFECTIVE PLEADING

We find it difficult to embrace a rule of law requiring that a plaintiff file suit prior to knowledge of his injury or, phrasing it another way, requiring that he sue to vindicate a nonexistent wrong, at a time when injury is unknown and unknowable.

13 In our opinion this same rule applies to malpractice cases against lawyers. We are confident that if this decision had been available for the District Judge he would have reached a different result in the instant case.

14 The plaintiffs could not reasonably have discovered the negligent acts until the termination of the litigation and until after the relationship of attorney-client had ended. 15 In Hodge v. Service Mach. Co., 438 F.2d 347, 349 (6th Cir. 1971), Judge Celebrezze, who wrote the opinion for the Court, stated:

16 A cause of action accrues when a suit may be maintained upon it. Black's Law Dictionary 37 (4th ed. 1951). A suit may not be brought upon a cause of action until it exists, and a cause of action does not exist until all its elements coalesce. In civil actions for damages, two elements must coalesce before a cause of action can exist: (a) a breach of some legally recognized duty owed by the defendant to the plaintiff; (b) which causes the plaintiff some legally cognizable damage. 17 Thus, no cause of action accrued until after the plaintiffs discovered or could reasonably have discovered the malpractice and until after the judgment of the Circuit Court had become final. Teeters v. Currey, supra; Bland v. Smith, supra. The judgment did not become final until the Court of Appeals decided the appeal and the time to appeal to the Supreme Court of Tennessee had expired.

Woodruff v. Tomlin, 511 F.2d 1019 (6th 1975)

CAUSE OF ACTION / ACCRUAL
DEFECTIVE PLEADING

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